Trade Policy Making in Canada: Are We Doing it Right?

W.R. Hines

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FOREWORD

Of the many organizational changes that occurred in Ottawa in the first half of the 1980s, the shift of the international trade function from the former Department of Industry, Trade and Commerce to the Department of External Affairs in 1982 was likely the most important in terms of its impact on, and implications for, Canadian policy making. The impact was felt not only in the conduct and performance of the trade policy function within Ottawa and between it and the provinces but also in the process of formalizing and implementing general economic policy and in the relationship between the Canadian private sector and the federal government. At a time when global economic changes were blurring the traditional line between domestic and international economic policy, and when certain domestic economic policies in Canada were being criticized for under-emphasizing or ignoring international factors, the reorganization appeared to be designed to strengthen the federal government's capacity to make, coordinate, and implement Canadian international economic policy more effectively.

Mr. Hines, seconded to the Institute from the Government of Canada for a period of 5 months during 1984, examines the reorganization in detail, including the private sector's response to it. His research includes a description of the Canadian import regime, as well as an examination of international financial issues, and subjects

not always covered in trade policy discussions.

The Institute believes this study will be a useful guide for those interested in the evolution and current operation of the international economic policy process in Ottawa. Private and public sector policy makers now face major decisions on substantial policy matters. This study provides a better understanding of the process by which policy is formulated, evaluated and implemented within the federal government.

The Institute is pleased to have had an outstanding practitioner undertake this work and thanks the Government of Canada for making Mr. Hines available for this project.

Rod Dobell
President

November 1984

AVANT-PROPOS

Parmi les remaniements effectués par le gouvernement fédéral au cours de la première moitié des années 1980, c'est sans doute le transfert, en 1982, de la responsabilité en matière de commerce international du ministère de l'Industrie et du commerce au ministère des Affaires extérieures qui aura eu la plus grande influence, de même que les plus profondes répercussions, sur l'élaboration de la politique canadienne. Cette influence s'est faite sentir non seulement dans l'exercice et la performance de cette responsabilité au sein du gouvernement fédéral et entre Ottawa et les provinces, mais encore dans le processus d'élaboration et de mise en oeuvre de la politique économique générale du Canada, et dans les relations du secteur privé canadien avec les autorités fédérales. À une époque où l'évolution de l'économie mondiale commençait à estomper la séparation traditionnelle entre la politique économique nationale et internationale et où l'on reprochait à certaines mesures de politique intérieure canadienne de minimiser, voire de négliger l'importance des facteurs internationaux, ce remaniement semblait destiné à renforcer la capacité du gouvernement fédéral d'élaborer, de coordonner et de mettre en oeuvre plus efficacement sa politique économique internationale.

M. Hines, que le gouvernement du Canada a détaché auprès de l'Institut pour une période de cinq mois au cours de 1984, a procédé à une analyse approfondie de ce remaniement en expliquant la réaction

suscitée dans le secteur privé. Son étude comporte une description du nouveau régime canadien des importations ainsi qu'une analyse de problèmes financiers internationaux et d'autres questions rarement abordées dans les discussions de la politique commerciale.

L'Institut est persuadé que cette étude constituera un guide pratique pour tous ceux qui s'intéressent au fonctionnement actuel et à l'évolution du processus d'élaboration de la politique économique internationale du Canada. Les décideurs du secteur privé et du secteur public sont appelés à prendre de graves initiatives sur les importants problèmes de politique économique de l'heure actuelle. Cette étude facilitera donc la compréhension du processus d'élaboration, d'examen et de mise en oeuvre de la politique fédérale.

L'Institut se réjouit qu'un éminent spécialiste ait pu entreprende cette recherche et remercie le gouvernement du Canada d'avoir mis M. Hines à sa disposition pour la réalisation du projet.

Rod Dobell
Président

Novembre 1984

THE AUTHOR

Roy Hines is an official in the Public Service of Canada. Mr. Hines graduated with a commerce degree from St. Francis Xavier University in 1958 and later studied economics at the University of Ottawa. He worked for the Department of National Revenue (Customs) from 1958-1963 and the Department of Finance from 1963-1982. Then he joined the Ministry of State for Economic and Regional Development. He is currently the Director of the Trade Policy Directorate of the Department of Regional Industrial Expansion. Mr. Hines has been involved in both the Kennedy Round and Tokyo Rounds of trade negotiations in the GATT, numerous bilateral and multilateral trade discussions and was Minister Counsellor and Deputy Permanent Representative for Canada to the OECD from 1974-1976.

SUMMARY

National trade policies are the inevitable components of the international trade environment and their success may be measured by the extent to which they contribute to international growth, stability and harmony. Equally, trade policy is an important instrument of domestic economic development and must serve the interests of a national business community. These tasks are not always wholly compatible. Competitive demands in a rapidly changing world are mirrored by the achievements of the General Agreement on Tariffs and Trade or the Bretton Woods Agreements on one hand, and emerging protectionist measures and pressures, continuing debt problems and growing government intervention on the other.

The promotion and protection of Canadian interests and the Canadian contribution to world economic stability is predicated on timely, appropriate and coordinated decision making on trade policy. This paper briefly reviews the trade policy decision-making process that existed in Ottawa until 1982. It examines in detail the reorganization of the trade policy function announced in that year and the effects of the reorganization on the different departments, agencies and services concerned with trade and trade policy. It concludes that, while the system prior to 1982 was not without imperfections, the reorganization has created more, and more serious, problems than those it was intended to solve.

The separation of import, export and domestic economic development responsibilities in Ottawa is at the root of many of these problems. Alternative ways to improve the current situation are put forward. First is the creation of a separate trade department which would provide a single window in Ottawa on trade and investment matters for the private sector. The second is to return responsibility for trade to the Department of Regional Industrial Expansion which, with its investment responsibilities, would be responsible for ensuring that the trade-offs and competing priorities between industrial development, trade and investment are adequately considered in the decision-making process. In either case, the paper proposes that tariff and import policy be transferred from Finance to the new trade centre, that consideration be given to merging the Assessment Programs Branch of Revenue Canada into the new trade body, and that the minister of the trade centre be given responsibility for all trade-related institutions in the federal government.

The roles of the three quasi-independent institutions (the Tariff Board, the Anti-dumping Tribunal and the Textile and Clothing Board) that concern themselves with imports are examined. It is concluded that there is little justification for the present arrangements which involve considerable overlap in functional responsibilities among the three. It is recommended that they be amalgamated into a single agency combining their existing functions and research staffs. Should such an amalgamation be effected, the agency's mandate might be expanded so that Canadian industry in all sectors could petition it to carry out public inquiries in cases where they are suffering from unfair import competition. The agency could also carry out trade-related research and public inquiries, either on its own initiative or at the request of the government, in both the import and export field.

The paper also examines the relationships between government departments and agencies with respect to international macro-economic and monetary matters and concludes that primary responsibility for these issues should continue to be centered in the Department of Finance and the Bank of Canada. At the same time, it is recognized that the Department of External Affairs has, and will continue to have, a legitimate right to be involved and consulted on any

aspects of policy in those areas that affect our relations with other countries. As such, the role of coordinator, international economic relations, created in the 1982 reorganization, might usefully be retained within External Affairs to bring together the international dimension of economic policy, including trade, aid and investment, for major international meetings such as the annual economic summit and for coordinating our economic relations with other countries.

ABRÉGÉ

La politique des nations en matière de commerce s'inscrit nécessairement dans un cadre international et son succès dépend de la mesure où l'on contribue à la croissance, à la stabilité et à l'harmonie mondiales. Par ailleurs, la politique commerciale est l'une des pierres angulaires du développement économique intérieur et doit servir les intérêts du milieu d'affaires du pays. Or, ces objectifs sont loin d'être toujours compatibles. Dans un monde en pleine évolution, les exigences contradictoires se manifestent d'une part grace au succès des Accords de Bretton Woods ou de l'Accord général sur les tarifs douaniers et le commerce et, d'autre part, par l'apparition de pressions et de mesures protectionnistes, par la persistance des problèmes d'endettement et par l'intervention grandissante des gouvernements.

La promotion et la protection des intérêts canadiens à l'étranger ainsi que la contribution du Canada à la stabilité économique mondiale dépendent de la pertinence et de la coordination des décisions du gouvernement en matière de politique commerciale. Dans cette étude, on examine d'abord brièvement le processus décisionnel au sein du gouvernement fédéral avant 1982. On procède ensuite à une analyse approfondie du remaniement effectué cette année-là de la fonction décisionnelle en politique commerciale, et des répercussions du remaniement sur les divers ministères, organismes et services fédéraux intéressés. Il ressort de cette analyse que, malgré les imperfections du

système antérieur à 1982, cette initiative a suscité l'apparition de problèmes plus graves et plus nombreux que ceux qu'elle voulait résoudre.

En effet, il semble que bon nombre de ces problèmes soient directement attribuables à la dispersion des responsabilités au sein du gouvernement fédéral en matière d'importation, d'exportation et de développement économique. Pour remédier à la situation, on propose un certain nombre de solutions. La première serait la création d'un ministère du commerce indépendant, offrant au secteur privé une unique ouverture au sein du gouvernement fédéral sur tout ce qui concerne le commerce et l'investissement. La seconde serait de réassigner la responsabilité du commerce au ministère de l'Expansion industrielle régionale. De cette façon, puisqu'il est déjà chargé des questions d'investissement, celui-ci s'assurerait que les options concurrentes et les relations inverses existant entre le développement industriel, le commerce et l'investissement entrent en ligne de compte dans le processus décisionnel. Dans les deux cas, on propose que le ministère des Finances cède la responsabilité de la politique du tarif et des importations au nouveau ministère du commerce, que l'on examine la possibilité de fusionner la Direction des programmes de cotisation de Revenu Canada à ce nouveau ministère, et que l'on place sous la responsabilité du nouveau ministre tous les organismes fédéraux intéressés aux questions commerciales.

On examine ensuite les rôles respectifs des trois organismes quasi-indépendants (la Commission du tarif, le Tribunal anti-dumping et la Commission du textile et du vêtement) affectés aux questions d'importation. On conclut que le système actuel est indéfendable à cause des chevauchements considérables des fonctions de ces trois organismes. Par conséquent, il serait souhaitable de les fusionner en un seul organisme fondant les attributions actuelles et regroupant le personnel de recherche. Dans une telle éventualité, on pourrait élargir les fonctions de cet organisme pour permettre à tous les secteurs de l'industrie canadienne de demander des enquêtes publiques dans les cas de concurrence déloyale de la part de producteurs étrangers. Ce nouvel organisme serait autorisé à entreprendre des recherches et mener des enquêtes, que ce soit de sa propre initiative ou à la requête du

gouvernement, dans le domaine des importations comme des exportations.

De l'examen des rapports existant entre les ministères et les organismes fédéraux en matière de problèmes monétaires et macro-économiques internationaux, on conclut que le ministère des Finances et la Banque du Canada devraient demeurer responsables de ces questions. On ajoute que le ministère des Affaires extérieures possède indéniablement, et devra conserver, le droit légitime d'être consulté et d'agir sur tout aspect de la politique touchant à nos relations avec d'autres pays. À cette fin, on pourrait maintenir au sein du ministère des Affaires extérieures la fonction de Coordonnateur des relations économiques internationales, créée lors du remaniement de 1982; ceci permettrait d'unifier les dimensions internationales de la politique économique du Canada, et notamment le commerce, l'aide et l'investissement, pour faciliter la participation de notre pays aux principales rencontres économiques internationales, telles que le sommet économique annuel, et la coordination de nos relations économiques avec d'autres pays.

INTRODUCTION

This paper examines the institutional arrangements and processes for trade and foreign economic policy decision making in Ottawa. During the past few years, major changes have taken place at the cabinet level, and in departmental organizations and responsibilities, designed to improve policy coordination and planning. Nowhere is the need for a coherent and comprehensive approach to policy making more important than in the international economic field, given Canada's heavy reliance on foreign markets and the growing interdependence of nations. One of the major, although perhaps obvious, conclusions of the Trade Policy Review published by the Government of Canada in August of 1983 was that trade policy is not made in a vacuum but is an integral part of domestic economic development policy. Likewise, domestic macro-economic, financial and monetary policies are not made in isolation. The interaction between these and foreign economic developments affects the lives and well-being of all Canadians.

The decision-making process in government is as much a question of organization as anything else. This paper examines the structures and activities of those departments concerned with international economic issues and certain quasi-independent agencies concerned with trade matters. The reorganization of government departments announced in January 1982 is assessed in a descriptive analysis based on personal experience, many off-the-record discussions and interviews

with senior public servants, the results of a questionnaire completed by private sector firms and industry associations, and a review of published material on the subject. The paper focusses on the trade dimension of Canada's international relations but touches on other elements of our economic affairs with foreign countries. It does not address theoretical aspects of decision making but rather looks at existing arrangements from the perspective of a practitioner, with a view to considering their adequacy for the future.

The paper was essentially completed prior to the organizational changes to the cabinet committee system announced by Prime Minister Turner on June 30, 1984 and Prime Minister Mulroney on September 17, 1984. While there has been a marked increase in public attention to trade issues in recent months, particularly on the question of freer trade and more secure access to the United States market, there has been no indication that the government is contemplating any major changes in the way trade issues are dealt with among government departments. As such, the observations made in this paper, although based on what existed under the previous administration, appear to be relevant.

1: THE INTERNATIONAL TRADING ENVIRONMENT

The severe economic strains experienced internationally in recent years have raised concerns about the abilities of nations to cope with rapid change and their willingness to work together in international institutions to resolve problems and develop conditions essential for stability and growth in the world economy. The oil shocks of the 1970s, the recession, major debt problems facing developing countries, stagnant world trade and increased pressures for protectionism, fiscal deficits in developed countries and volatility in exchange rates are among the forces that have heightened awareness of the domestic implications of international developments and of the conflicts and difficulties involved in addressing issues. That there are no simple, painless solutions is evidenced through the almost continuous meetings of government officials and ministers in one international forum or another during the past few years, and the communiqués issued following these discussions. Successive Canadian finance and external affairs ministers have urged a cooperative approach between nations in confronting the problems and recognizing the reality of interdependence. A similar line has been taken at the annual economic summit meetings. Much has been accomplished and crises have been averted, but the pressures remain and will not disappear quickly. Indeed, they are likely to intensify world-wide as trade barriers come down, financial markets become more open and integrated, technology

transfers speed up, multinationals expand, transportation and communications links improve and all countries strive for higher standards of living for their people.

Economic change and adjustment are not new phenomena; managing them, however, both internationally and domestically, is key to maintaining order in the world trade and financial systems. Inward-looking trade policies set by one country will provoke similar responses from other countries. Monetary policies adopted without regard for their international impact can produce havoc in the world payments system. As R.W. Lawson, former deputy governor of the Bank of Canada, noted in a 1983 speech, "In our world virtually all of the key decisions on economic policy are taken at home rather than internationally. In that sort of world, international financial order is not automatic; it exists only to the extent that national policies encourage and protect it". It is difficult for self-interested nation-states to balance competing demands for actions intended to promote domestic economic welfare and those which improve international cooperation and world economic welfare. The two are not always compatible, at least in the short term, especially if the latter involves job loss in the absence of alternative employment opportunities or infringes on domestic sovereignty. Hard decisions and choices, most of a political nature, must often be made before real progress, however slow, can take place.

Much has been written about the need for timely adjustment and the roles of the firm, the individual and government in the process. We know that industries gradually move off-shore to low-wage less-developed countries (LDCs) as costs, particularly labour costs, increase in developed countries. This in turn results in pressures on governments to adopt remedial measures to protect jobs and investment. This trend usually affects mature industries such as steel, autos, textiles, clothing, footwear, ships or small electrical appliances which are characterized by standard technologies and a high ratio of labour to capital. However, no sector is immune as new mobile technologies and innovative ideas are felt throughout the system. We continually seek new and exotic products to satisfy our tastes, new production techniques and lower-cost consumer goods and recreation. The

technological revolution is only one, albeit important, aspect of this process. The expansion of the service sector is another. Multinational enterprises that transfer or rationalize production functions between countries with little regard for host country objectives provide another manifestation of the dynamics at work in modern societies.

Canada, with its relatively open economy, is vulnerable to international economic developments whether they be inflationary pressures, rising protectionism, rapidly changing interest rates or depressed commodity prices. Yet we, like most nations, are somewhat hypocritical about trade and international economic issues. We acknowledge a need for access to world markets and espouse the principles of freer trade, capital movements and international cooperation and, at the same time, put in place domestic policies that distort trade and investment flows. Our economic history and present day economy are littered with programs, practices and legislation, federal and provincial, designed to protect sovereignty, promote economic development and provide jobs for Canadians. They range from industrial, regional, agricultural, transportation or fisheries subsidies to the maintenance of certain inefficient crown corporations. The Customs Tariff, government procurement practices, banking legislation and the Foreign Investment Review Act, the National Energy Program and certain tax and communications policies work in the same general direction. This process is unlikely to change as nation building proceeds and new policies and partnerships between the public and private sector are developed to meet changing circumstances. But the conflict between the need for access to foreign markets and capital and the desire to ensure a sound economic and ownership base on which Canada can build is becoming more focussed as an increasingly sophisticated and educated population demands fuller knowledge of the trade-offs involved, both at home and in our relations with other countries.

Canada is not unique. All governments intervene to varying degrees in the economic affairs of their countries. Even in the United States, as committed as any country to the free enterprise system, attitudes are changing. The US business community is now beginning to recognize the difficulty individual firms face in meeting foreign

competition that benefits from subsidies, tax incentives or market targeting. They are calling for stronger measures of protection against imports, reciprocity legislation, international agreements on subsidy and investment practices, and condoning ad hoc protective measures taken outside the multilateral legal framework, such as quotas on Japanese automobiles. "Buy America" legislation, massive direct government funding for military and space research and development, and the designation of whole sectors of the US economy as preserves for American industry (coastal shipping, defence support industries) illustrate the degree of government involvement in the US economy. The pressures for intervention are likely to continue as the US trade deficit mounts, unemployment remains high and the sacred cows of its industrial base face renewed attacks from international competition, especially from newly industrialized countries who are now world-scale manufacturers in many sectors. The scene in Europe and Japan is much the same as countries grapple to find the right balance between their domestic constituencies and their broader international concerns.

More generally, the international community faces demands for new economic arrangements that will give the developing world a larger voice in the control and distribution of world resources and trade. Hand-outs are no longer the order of the day as the LDCs seek better access to major world markets for their generally limited range of saleable products. The generalized system of tariff preferences, the Lomé Convention, regional preferential trading blocs, and certain commodity agreements have been put in place in response to these concerns. However, they tend to undermine the most favoured nation principle of the General Agreement of Tariffs and Trade (GATT) and, in some commodity agreements, frustrate the operation of the price mechanism by preserving existing market shares, particularly for certain LDCs whose economic survival may depend on a single commodity. The Multifibre Arrangement, negotiated under the auspices of the GATT but a clear deviation from its principles, does much the same for developed countries who have found it difficult to adjust to the increasing competitiveness of emerging low-cost suppliers. At the same time, LDCs facing major financing difficulties are increasingly forced to close their relatively small markets to outside

suppliers. Thus, while recognizing the benefits that can flow from freer trade and capital movements, the international system has been sufficiently flexible to accept or turn a blind eye to the need for governments, both developed and developing, to deviate from the ideal especially when they act in concert. Rodney de C. Grey (1983) suggests that the GATT post-Tokyo Round is about trade policy regulation which is not synonymous with trade liberalization.

The GATT, while extremely important as a framework for the conduct of international trade, has little scope to safeguard the international trading system when national governments resort to voluntary export arrangements (autos), price restraints (steel), export credit practices in support of industries not otherwise competitive, tied aid, inter-company transfer pricing between multi-national exterprises, countertrade practices, trade impacts of government-owned enterprises, or when governments are simply not prepared to have their trade practices scrutinized internationally (agriculture). Moreover, the GATT has not been able to encourage the LDCs to open their markets to world competition and, indeed, incorporates articles, at LDC insistence, exempting them from major obligations in the Agreement. Relatively few LDCs have become signatories to the GATT codes negotiated in the multilateral trade negotiations. For a middle-sized country like Canada, the GATT continues to be significant and we will need to support efforts to strengthen and use it. But we should recognize that as a contractual legal instrument it does not cover many trade practices prevalent today and falls short of what is needed to provide effective discipline. Recently an increased number of disputes are being referred to the GATT for settlement and efforts are being made to launch another round of trade negotiations, possibly in 1986, to develop new international understandings and contain protectionism.

The situation in the macro-economic and monetary field is perhaps even more imprecise than in the trade area in the sense that there are no effective measures which the international community can bring to bear on countries perceived to be pursuing policies that have an adverse effect on others. Moral suasion, especially in international forums (International Monetary Fund, Organization for Economic Cooperation and Development, World Bank) is an important element in

the process, as are the terms and conditions attached to countries' access to International Monetary Fund resources or other international borrowings for balance of payments purposes. Market pressures have a major role to play in bringing about adjustment where policies and practices are not consistent with the underlying forces; however, the debt problems facing many developing countries, for example, are no longer spoken of as "theirs" since they simply are not in a position to repay. They are world problems for both debtor and creditor nations to resolve. Moreover, when the United States pursues a particular interest rate policy primarily for domestic reasons, countries like Canada are hard put to deviate significantly from that path in the absence of exchange controls.

International economic relations are essentially a process of nations trying to get along with each other in much the same way as different groups within a country come together to resolve problems and pursue national objectives. The dynamics are different, marked by wide disparities in standards of living, divergences in political structures and goals, different resource endowments and, above all, a process involving sovereign nations where consultation and consensus, rather than majority voting, is the norm. In this interdependent environment, rules of conduct between nations are essential to maintaining order. The GATT and Bretton Woods Agreements are monuments to international economic cooperation but they can continue to do the job only if member governments support their objectives and abide by their disciplines. Cracks have appeared in the system. This is to be expected; today's world is very different from that of the late 1940s. As new economic problems emerge, we will need to adapt our domestic and international institutions and processes to new realities.

Canada has always taken an active role in multilateral and bilateral economic discussions to promote and protect our interests and contribute to world economic stability. We have a major stake in the process as exports now account for over 25 per cent of our gross national product, capitals inflows are still important in attaining economic development objectives, and our financial institutions are becoming more heavily involved in world financial markets. While our

influence in shaping decisions in world councils is limited by our size, timely decision making on international economic issues by the Canadian cabinet and bureaucracies can make an important contribution to our effectiveness in these discussions and negotiations.

There have always been conflicts and disputes among government departments dealing with international issues, especially trade, as they strive to find the right balance between Canada's overall interest and the special concerns of a particular department and its domestic constituency. The process is essentially one of interaction and consultation among interested private sector parties, provincial governments and/or federal government departments and agencies to identify and analyze an issue and elaborate options for ministers who, in turn, add the political dimension. Decision making is normally cautious, as might be expected given opposing demands and the need to assess facts and weigh alternatives. Interdepartmental consultative mechanisms, involving experts from various departments, have been important in ensuring that the process takes into account all the relevant considerations and options in arriving at decisions.

2: THE 1982 REORGANIZATION

A New Structure

On January 12, 1982, Prime Minister Trudeau announced a major reorganization of the Canadian government affecting the Departments of External Affairs, the Ministry of State for Economic Development, Industry, Trade and Commerce (ITC) which was superseded by the Department of Regional Industrial Expansion (DRIE). The objective was to put in place government machinery to maximize the benefits from projected economic developments within Canada and take account of the regional dimension in related decision making by cabinet. A second focus, the primary concern of this paper, was to improve government's capacity to assist Canadian business in identifying and pursuing export markets and to attach greater weight to "economic factors in the design of foreign policy and the conduct of our foreign relations, to ensure they serve Canadian trade objectives".[1]

The principal features of the reorganization as it related to international activities were:

- The Ministry of State for Economic Development was given responsibility for regional policy coordination including the trade dimension and was renamed the Ministry of State for Economic and Regional Development. It retained senior executives in each province as federal economic development coordinators to coordinate the activities of federal departments, and to provide

cabinet with direct access to information on regional needs and opportunities. This ministry was wound down following the June 30, 1984 announcement and its regional responsibilities were transferred to the Department of Regional Industrial Expansion.

- DRIE was created through the amalgamation of the regional programs of the Department of Regional Economic Expansion (DREE) with the industry, small business and tourism components of ITC. DREE disappeared and DRIE lost the legislative mandate for most trade matters previously with ITC. However, it retained responsibility for the Textile and Clothing Board, the Canadian Industrial Renewal Board, and the Machinery and Equipment Advisory Board, all of which have trade-related functions. It was also assigned responsibility for the establishment of an office of industrial adjustment to be the focal point for developing and implementing programs to deal with specific industrial adjustment problems and for the delivery through its regional offices of the program for export market development (PEMD) and domestic aspects of other trade programs.
- The Department of External Affairs took over responsibility for trade policy development and export promotion from ITC including the conduct of multilateral and bilateral negotiations, the administration of the Export and Import Permits Act (quotas), the Export Development Corporation (EDC), the Canadian Commercial Corporation (CCC), the Trade Commissioner Service, and PEMD. The press release announcing the reorganization specified that the department was to have "substantial involvement with Finance in tariff issues" and to work closely with the Ministry of State for Economic and Regional Development and other relevant departments on the trade aspects of domestic economic and regional policies.
- The minister for international trade was transferred from ITC to External Affairs to lead the international trade and export promotion activities and to be responsible for the policy aspects of EDC, CCC, and PEMD. He is supported by a deputy minister for international trade, who was also appointed coordinator for international economic relations. In this latter function, he

operates under the direction of, and reports to, the secretary of state for external affairs rather than the international trade minister.

Billed as a relatively straight forward organizational change, the restructuring signalled some fundamental shifts in the government's approach to both domestic economic decision making and the handling of trade and economic relations with other countries. It took until November, 1983 to get the necessary legislation through Parliament even though the institutional changes were initiated immediately following the prime minister's announcement. The whole exercise has been extremely complicated, perhaps more so than its designers anticipated, necessitating major internal reorganizations in both External Affairs and DRIE, changing the traditional lines of communication between government and the private sector on trade matters, and altering the checks and balances that had previously existed between government departments.

The government first put forward the reorganization legislation in Bill C-123 which was given first reading in the House of Commons on June 30, 1982. That bill died on the order paper and was reintroduced as Bill C-152 on May 5, 1983. After being examined by the Senate and the Standing Committee on Miscellaneous Estimates, it was passed with only minor amendments to what had been originally proposed by the government. Both opposition parties opposed the reorganization. The Commons debates centered primarily on the demise of DREE and a concern that the problem of regional disparities in Canada would become secondary in the new DRIE. There were misgivings about the transfer of the trade function to External Affairs on the grounds that it was not practical to break the direct link between domestic industry and trade promotion and development, and the potential loss of effectiveness within the Trade Commissioner Service if, as had been suggested, its officers would be required to carry out unrelated duties at embassies abroad. Perhaps most important, it was argued that the potential would exist within the new External Affairs organization for trade-offs between trade objectives and broader international political considerations such as humanitarian concerns or trade boycotts. A New Democratic Party member called for the establishment of a separate

trade department rather than the amalgamation being proposed. Opposition members also pointed to the reorganization and morale problems, prevalent at the time of the debates in both DRIE and External Affairs, and the general confusion that surrounded their operations.

The reorganization sought to consolidate Canada's external economic and trade interests by placing the overall coordination responsibility for these activities in External Affairs. To some extent this objective was achieved although it stopped far short of full integration. As DRIE retained responsibility for certain trade-related functions, it must maintain an active interest and involvement in the trade activities of the restructured Department of External Affairs to fulfill its mandate in respect of industrial and regional development. Moreover, it and other sectoral departments are the primary source of data and information in Ottawa about Canadian industry and its capabilities on which External Affairs must rely in developing mandates for discussion and negotiation with other countries.

Perhaps the most obvious gap in the reorganization scheme in terms of providing a single window in Ottawa on trade and international economic matters was the lack of any attention to the import side of trade. External Affairs' "substantial involvement with Finance in tariff issues", as we will see later, is only one aspect of import policy. No change was made to the roles of Revenue Canada-Customs and Excise, the Tariff Board, the Anti-dumping Tribunal, the import role of the Textile and Clothing Board or the substantial involvement of DRIE and other departments in import policy. The press release reference to tariff issues indicates that some thought must have been given to the subject and a decision taken to leave the existing arrangements untouched at least for the time being, perhaps in light of the fact that the question of amalgamating the quasi-judicial import bodies was still before a House of Commons committee studying import policy. Furthermore, to bring import policy under the wing of the trade minister would have resulted in the equivalent of a full department of trade under the umbrella of External Affairs—a move which would have likely raised concerns in Finance, been more difficult to get through Parliament because it would have involved taxing statutes, and

generated opposition in the private sector. The one area touching on import policy and administration that was transferred to External Affairs was the Export and Import Permits Act and responsibility for the negotiation of import quotas under that Act. This made sense to the extent that it was a self-contained unit within ITC that could be moved with a minimum of disruption.

Another area of international economic activity that received little attention in the public documents relating to the reorganization was macro-economic and monetary matters. Governments, particularly in developed countries, have over the years created a network of international forums for exchanging views, opinions and forecasts concerning economic developments in their respective countries and for receiving feedback to be taken into account in formulating domestic economic policy. In large measure, the Department of Finance and the Bank of Canada carry out this activity for Canada. While the reorganization provided for a deputy minister in External Affairs to act as coordinator for international economic relations, Finance continues to maintain effective control in this area.

On balance it would appear that the transfer of the trade function and the creation of a coordinator for international economic relations in External Affairs was simply one more step in the process of consolidating Canada's international activities in one ministry. It was not comprehensive in the sense of providing "one-stop shopping" for Canadian business on trade matters and indeed, based on a questionnaire conducted for this paper, it appears that the business community continues to identify more with DRIE than External on trade matters. It has been suggested that the amalgamation implies a view that trade and foreign market access questions are influenced more by external factors than domestic production capabilities and international competitiveness. Alternatively, it may reflect the attitude that trade will look after itself if we make domestic adjustments to become more competitive internationally and that, in this situation, one need only worry about maintaining good economic relations with our trading partners. Both interpretations are valid and they are not mutually exclusive.

Private Sector Views on the Reorganization

The reorganization was probably regarded by the general public as little more than bureaucracy at work. Even in that segment of the business community knowledgeable about government operations, the new arrangements did not cause a major stir at the time they were announced. Rumblings are now evident although many feel that it is still early to make a judgment and are willing to give the system a chance. Concerns relate to the length of time it has taken both External Affairs and DRIE to complete their internal reorganizations, but they also focus on matters such as the time and paper work involved in getting decisions, jurisdictional disputes within and between departments, lack of accountability, and the potential for breakdown in the interdepartmental consultative process.

As background for this paper a short questionnaire (see page 17) was forwarded in February, 1983 to 55 industry associations and 138 private firms to find out how they regard the institutional arrangements and decision-making processes in Ottawa on trade issues two years after the reorganization was announced. The questionnaire was designed to protect respondents' anonymity. Seventy-six responses were received, 23 from associations and 53 from private firms, the results of which are tabulated in Annex I. This small sample does not permit any firm conclusions or sweeping generalizations. However, some respondents did register opinions which were quite critical of the transfer of trade to External Affairs in response to questions 5 and 10. The following quotes illustrate the nature of the comments received:

> Imports-exports and trade are economic matters and should be under the responsibility of DRIE.

> Just at the time Canadian industry finally woke up to the need to export, the government re-organized the department which had the best reputation for professional service [Trade Commissioners] and which was known to industry. To this day chaos has existed. Government personnel affected are concerned only with their career considerations and have no time for industry.

> The jury is still out. My impression is that the trade people in External Affairs have tended to become more the striped suited diplomats rather than practical agents. I believe that External Affairs has become bloated with too many chiefs jockeying for more turf.

Questionnaire

1. Have you had occasion in the past three years to seek advice/assistance from the federal government in Ottawa concerning trade matters? If yes, how often?

2. Did you encounter any difficulty in identifying which department, agency, etc. was the appropriate contact to provide the advice/assistance?

3. Generally, do you feel that the advice/assistance received was accurate, timely and useful to you?

4. At present, if you have a trade problem, dealing with either imports or exports, do you know which department/agency in Ottawa to contact?

5. Are you familiar with the government reorganization announced in January 1982 in which trade responsibilities, including the Trade Commissioner Service, were transferred from Industry, Trade and Commerce to the Department of External Affairs? If yes, do you think this was a good or bad move? Please explain.

6. Generally, do you believe that merging trade and external economic policy responsibilities in External Affairs will serve the interests of the Canadian business community over the longer term?

7. The 1982 reorganization did not affect the trade responsibilities of the Department of Finance, Revenue Canada-Customs, the Machinery Equipment Advisory Board in the Department of Regional Industrial Expansion, the Tariff Board, the Anti-dumping Tribunal or the Textile and Clothing Board. Was this a good or bad decision? Please explain.

8. Have you dealt with the Department of External Affairs since it was reorganized or any of the Departments and agencies mentioned in (7) above in the past three years on trade matters? If yes, for what purpose?

9. Did you find in your dealings with these organizations that:

   (a) You received a fair hearing;
   (b) Proceedings were transparent enough;
   (c) Adequate reasons for decisions were given;
   (d) Decisions were timely;
   (e) Costs were reasonable;
   (f) The department/agency had adequately researched the issue;
   (g) The agency was helpful in providing advice/information;
   (h) It was necessary to engage experts (legal counsel/consultants) to represent your interests?

10. Any additional comments or observations you might have would be appreciated.

11. Was this questionnaire completed by an industry association or a private firm?

12. Please name the Canadian city were your firm/association is located.

> The intent of making External Affairs serve the trade priorities of the government was laudable but the resulting decoupling of export markets from domestic ones, the dismemberment of ITC and the separation of product expertise from market expertise was a high cost to pay.
>
> In my opinion a poor move. ITC was for years the focal point for industry to communicate with the federal government on matters related to industry and trade. External Affairs has not yet filled this role nor has DRIE which is looked upon by many as a source of hand-outs for sick companies, most of which should be allowed to die.
>
> There is a conflict of interest when External is asked to correct trade problems. Restraining trade in any way is a difficult negotiation and to be effective negotiators must be tough. This can be anathema to a department whose raison d'être is to promote good relations.
>
> [Bad because] they [External] show no technical capabilities and do not seem to understand the advantages of international standardization.
>
> It produced a clash between two cultures [diplomacy and trade] which will take 10 years to resolve.

Not all the comments received were negative but those in the positive camp were in the minority and not overly supportive. Again a few quotes to illustrate:

> The first two years of this reorganization have witnessed substantial disorganization and dislocation. This may be repaired if External Affairs can be convinced to embrace its new mandate effectively and if efficient linkages to product expertise can be established. The whole exercise has wasted time and energy in the pursuit of conceptual elegance. We want focus on the nuts and bolts of exporting successfully rather than striving for the most consistent organizational chart.
>
> Trade issues and industrial development are intimately related. Thus External Affairs must have industry specialists on its staff to work in close harmony with the Trade Commissioners.
>
> Raised trade to a higher profile and level of importance.
>
> On the surface this appears to be a good move because it utilizes our world-wide facilities more efficiently and provides for more trade coverage; on the other hand I fear that trade priorities will eventually be diluted by political priorities.

> In general, has sensitized whole trade decision-making process toward trade. However trade policy is becoming far too politicized internationally for our liking.

These comments, together with others set out in Annex I, reveal a certain degree of concern in the private sector, if not outright discontent, with the current arrangements. To some extent, this may reflect the view of the individual who completed the questionnaire rather than the overall experience of the company or association involved. Moreover, a simple counting of yes/no responses does not tell us very much if for no other reason than the fact that there are significant differences between the respondents, some of whom are in continuous contact with government (large firms, associations) and others who deal with government only once or twice a year. On the other hand, since the majority of respondents indicated that they were familiar with government organization and had sought advice or assistance in recent years (questions 1 and 5) it seems reasonable to conclude that the responses represent their experience in dealing with government. Of the 69 respondents that had occasion to seek advice or assistance, 47 (68 per cent) had no difficulty in identifying which department or agency was the appropriate point of contact and 55 (80 per cent) stated that they knew which department or agency to get in touch with on a trade-related problem. One cannot dismiss these comments lightly. They are indicators of how the Ottawa trade/industry organization is viewed by the private sector.

The objective of question 7 was to ascertain whether or not the private sector thought the import policy side of trade should also have been involved in the 1982 reorganization. Most (35) of the respondents felt that it was a good idea not to have involved import policy or the institutions that deal with it in the reorganization although there was a large "don't know" response. As in the case of question 5, the explanation given for the good/bad responses varied considerably. Those opposed to changing the organizational arrangements on the import side used expressions such as "more confusion is not necessary", "continuity of experience", "no operational reason to change", "bodies are now functioning well with experienced staff", "existing bodies are more responsive to industry needs than External or DRIE", and, "proper

attention would not be given to tariff issues in External". One association commented that "leaving them as they are can only be good judging from the results of those who were changed". Those who felt it was bad not to have dealt with import matters at the same time, included explanatory notes pointing to lack of coordination, no centre of direction for Canadian industry, and an expectation that they would eventually be merged with the remaining trade functions. A number of respondents recommended the amalgamation of the quasi-independent boards that deal with import issues but were opposed to tariff policy being transferred to External Affairs.

The responses to the catchall question, number 9, revealed some surprises. For a number of years, conventional wisdom around Ottawa suggested that it was costly for firms to get decisions from the Ottawa bureaucracy particularly on import issues and that the services of experts to represent their interests were becoming more necessary. This is not supported by the results received to questions 9 (e) and (h) where the majority stated that costs were reasonable and that it was not necessary to hire legal counsel or consultants. Indeed, for the eight subquestions put under this item, a majority positive response was received except the one which is most important in the context of this paper namely, whether decisions were timely 9 (d). Here the majority felt they were not, although there was a large mixed response with many ticking off both the yes and no sections and qualifying the response by the word "sometimes", noting that it depended on which department was concerned.

3: APPROACHING INTERNATIONAL MACRO-ECONOMIC AND MONETARY ISSUES

The Department of Finance and the Bank of Canada are the main decision makers with respect to international macro-economic and monetary policies. The long-standing relationship between the two reflects the interaction between fiscal policy, debt management and monetary policy, and the need for coordination in policy formulation. It is a sensitive area given the opportunity for speculation and profit if privileged information became public or the market misinterpreted statements by either the minister of finance or the governor of the Bank. Caution is the general rule and this field is something of a closed shop, regarded by officials in other departments as difficult to penetrate. This is not unusual and these policy activities are handled in much the same way in other countries and among countries: through an old boys' network of treasury and central bank officials who can understand and talk to each other about prevailing economic and financial issues in the knowledge that confidences will be maintained.

In fact, few decisions are taken internationally in the macro-economic field. More frequently there is a convergence of views between representatives of national governments on how to achieve certain objectives, such as promoting stability in world financial markets, improving liquidity, dealing with inflation, or examining appropriate exchange rate values in light of national policies. There is

considerable personal contact between individuals in the major capitals at the official and political level but the main discussions take place in the International Monetary Fund's (IMF) Interim Committee and Executive Board, the Bank for International Settlements, the Economic Policy Committee of the Organization for Economic Cooperation and Development (OECD) and its working parties, and ministerial meetings within these organizations. The issues are also high on the agenda of the annual economic summit.

These meetings permit national representatives to explain policy positions, examine the policies of others, offer advice and counsel as to the direction of future developments in the world economy, and to consider appropriate policy responses. A complete meeting of minds does not always result. There are some sharp differences of opinion, most not fully reflected in public statements or communiqués reporting on the discussions. An effort is sometimes made to paper over major disagreements to minimize possible adverse market reaction or to avoid giving the impression that the international community is intruding in the internal affairs of any country or is overly critical of its economic management. The appropriate policy mix for a particular country at a particular time is a national decision. Generally, the international community becomes involved only if that country must resort to IMF resources or borrowings from other governments in support of its balance of payments, at which time conditions may be imposed. Both the IMF and OECD have publicly questioned the policy directions of particular governments, including those of Canada, but such comment is intended to be more advisory than critical.

The information obtained through the international network and from other sources, such as private sector forecasts, consultations with the Canadian business community, market information and signals, published forecasts from international organizations, the IMF's annual appraisal of domestic economic performance, internal departmental analysis and forecasts, are the basic ingredients used by the minister of finance in formulating broad economy policy and adopting measures designed to influence market decisions. The budget is the principal vehicle used for this purpose and usually incorporates a review of international economic developments together with an assessment of

their impact on the options available for domestic action. What happens internationally affects our scope for action at home and what we do at home may impact internationally. In recent years, consultation with the private sector concerning the budget has increased—a development that has received strong support. More intensive consultation is also taking place among federal departments on budget proposals especially where they affect the other departments' programs and financial resources.

International economic and financial market data are vital to both the long-term and day-to-day decisions of the Bank of Canada in respect of interest rates, money supply, and exchange rates. While the minister of finance is ultimately responsible for monetary policy and while he and the governor of the Bank maintain close liaison, it is the Bank that carries out day-to-day operations including any interventions that may be necessary to smooth out sharp fluctuations in the exchange rate. The minister of finance is normally represented at the weekly meeting of the Bank's executive committee by the associate deputy minister of finance who, among other things, looks after the department's international macro-economic affairs. External Affairs is not involved in the Bank's on-going operations and Bank decisions do not go through the normal cabinet committee system.

The process of decision making within the Bank was explained by the governor in an appearance before the Standing Senate Committee on National Finance as follows:

> Monetary policy has its effect on the economy through its effect on interest rates . . . the policy question for the Bank of Canada from day-to-day and over time is what use of the power to influence interest rates by monetary expansion best promotes the national interest . . . What one has to do [in answering the question] is to examine the whole complex economic process sufficiently carefully to come to a balanced view about how the economy would respond over time to different rates of monetary expansion . . . to that end, [the Bank] has a considerable staff of able and experienced economic analysts who are occupied constantly in observing developments in the economy and the international environment, and who use all the information and all the analytic techniques that are available to throw what light they can on why the economy is performing as it is.[2]

Both the Department of Finance and the Bank of Canada have legitimate and practical needs in terms of domestic economic management to represent Canada and play an effective role in international discussions. This is unlikely to change and their substantive roles were not altered as a result of the 1982 reorganization. Developments in recent years have, however, led to a broader participation within Ottawa at the official level in the process as it relates to Canada's involvement in international fora. Foremost among these has been the constantly growing interaction world-wide among trade, monetary, debt, aid and political questions. It is no longer possible to treat these in isolation. The annual economic summit between the seven major heads of state and ministerial meetings in international organizations tend to focus on the full range of economic issues at any given time. The Department of External Affairs and certain other departments are involved in these broader discussions and accordingly they need to be informed.

The associate deputy minister of finance chairs an interdepartmental group on international financing issues composed of representatives of Finance, the Bank, External Affairs, the Privy Council Office, the Canadian International Development Agency (CIDA), EDC and on occasion, the inspector general of banks, to review developments and prepare Canadian positions and briefings for upcoming meetings. The coordinator for international economic relations in External Affairs has, at the deputy minister level, also held interdepartmental meetings to review international developments and their relationship to domestic issues such as structural adjustment and international debt problems. The deputy minister for political affairs in External Affairs, as the prime minister's personal representative for the economic summit from 1982 until September, 1984 has drawn on both External Affairs and Finance for the preparation of Canadian positions and the ministers of both these departments generally attend the summit as well as annual meetings of the OECD. Thus there is now considerable interaction between the two departments at all levels in the preparatory aspects of international meetings in respect of macro-economic issues. Other government departments do not have a major say in decisions affecting Canadian macro-economic policy.

The budget process is the best example of how control is closely held in this area. Final decisions on the content of the budget rest with the minister of finance and are known to only a few officials prior to its release. The minister, shortly before the presentation of the budget, briefs his colleagues in the cabinet committee on priorities and planning on the general direction and scope of the budget, reflecting both his decisions on the various proposals and suggestions received and his view on measures needed to achieve policy objectives. Ministers on the committee, of course, have a chance to influence the direction of these policies but it is understood that these discussions generally focus on the domestic political implications of proposals, for example the "6 and 5" program of 1983 and 1984, rather than international concerns. In this context, the secretary of state for external affairs, as a member of the priorities and planning committee, has an opportunity to make his views known if any particular proposal appears to be in conflict with commitments Canada may have undertaken internationally. The minister of finance, because of his exposure to international developments, is fully aware of the international implications of policy choices and these are usually taken into account in the ultimate budget proposals. The one major exception in recent years was probably the National Energy Program, where it appears that ministers did not fully anticipate the strong adverse reaction that would result internationally.

There has been some opening up in the interdepartmental consultative process on international macro-economic, financial and monetary issues. External Affairs officials now attend certain international meetings on these issues and they are consulted on, and help develop, Canadian positions for them. Whether this more extensive consultative process has yielded significant benefits in terms of decision making in Ottawa is a moot point. One advantage is an increased awareness among senior officials in other departments of the implications for domestic policy of international developments, as well as the converse. The disadvantages relate to increased bureaucratic processes, delays, and paper work.

4: THE CANADIAN TRADE COMMUNITY

The Players

Trade and investment responsibilities in Ottawa are spread among various government departments and agencies involving a relatively large number of ministers and public servants. The issues are usually politically sensitive, visible, and attract a high public profile given their differing impacts on the various socio-economic groups and regions in the country and on Canada's relations with other countries. They originate from various sources and cut across departmental lines—some predictable, some not. Domestic pressure groups may seek increased protection from foreign competition while requesting better terms of access for their products in foreign markets; an action by one of our trading partners may call for a reaction from Canada; international pressures may force the initiation of multilateral trade negotiations; businessmen or politicians may suggest a need for improved relations between Canada and an individual country or group of countries; domestic economic measures may adversely affect a trading partner inviting a negative response. The list could go on and, in fact, is constantly changing.

Traditionally, the departments concerned with broad trade and international economic policy have been Finance, External Affairs, and ITC. They did the necessary review, analysis of proposals, and preparation of positions and recommendations for ministers. The Privy

Council Office normally became involved only if the matter was expected to require cabinet consideration and, while its activity was partly procedural it also took a role in policy development when the prime minister's office had particular concerns about a proposal. In recent years, this latter role shifted to central agencies which were disbanded in the summer of 1984. Treasury Board made its input when funding considerations were involved. Each of the three main departments had a strong legal and practical interest in international economic developments. Finance had responsibility for the major instruments of import policy as well as its broader mandate for the management of the economy. ITC derived its role from the Industry, Trade and Commerce Act, its industrial policy role, and the Export and Import Permits Act under which the department administered the export and import control lists and took the lead in the negotiation of quantitative import restrictions. External Affairs was involved because of its overall mandate relating to the conduct and management of international negotiations and Canada's relations with other countries. The transfer of ITC's trade functions to External Affairs in 1982 significantly altered these relationships.

Other departments and agencies are also involved. Revenue Canada is active where customs administration is concerned and sectoral departments such as Agriculture, Fisheries, Energy, Mines & Resources, and Supply and Services are consulted and their officials often participate in international negotiations if their interests are at stake. The Department of Consumer and Corporate Affairs, CIDA, EDC, CCC and the Foreign Investment Review Agency (FIRA) also participate in the consultative process on matters relating to their concerns. Three independent bodies carry out inquiries or perform adjudicative functions relating to imports; namely, the Tariff Board, the Anti-dumping Tribunal and the Textile and Clothing Board.

The Situation Until 1982

Prior to the reorganization, ITC was unusual among Ottawa departments in that it was the main focal point for Canadian industry but at the same time it had to seek, in house, trade-offs between conflicting pressures from its domestic industry constituency and its

broader international trading objectives. The two sides of the house were often divided and many disputes were carried onto the interdepartmental circuit with the trade side seeking support from Finance and External Affairs (both of which leaned to freer trade) and the industry side looking for bedfellows in other sectoral departments. The disputes were particularly difficult on sensitive import issues such as cheese quotas, clothing or footwear imports. The debates could drag on in search of a solution which the ITC minister could live with in his dual responsibility and which he could sell to his cabinet colleagues, even if that solution was not the best in terms of Canada's overall interest. While ITC developed recommendations, Finance would input its concerns and External would bring into play its assessment of the international implications, all of which would be put together for ministerial decision. There might not be agreement on which course of action ministers should adopt, but the options would be spelled out and officials in the three departments would brief their respective ministers supporting their choice among the alternatives.

These arrangements had an inherent bias to a gradual movement to freer trade for two reasons. First, the ITC position normally embraced larger interests than the protectionist forces within the economy and this, in concert with the influence exerted by Finance and External Affairs, both with powerful ministers, presented a formidable force difficult for sector departments to oppose. Agriculture is an exception because of its political importance and the general lack of openness in agricultural trade world-wide. The second, and perhaps more important reason, is that while officials from the three departments looked at an issue from slightly different perspectives, each had a very strong contingent of officials who were, first and foremost, trade policy officers schooled in the virtues of freer trade and the need for pragmatism in finding the balance between domestic protectionist forces and foreign market access.

While trade officials from the three departments would engage in healthy debate to flush out the options, the substantive debate within the bureaucracy was primarily between the industry branches of ITC or sectoral departments on one side and the trade community in the three departments on the other. Philosophically, there was little significant

difference between trade policy officials regardless of which department they represented although trade officials within ITC could be constrained by their minister when he identified more closely with his domestic industry constituency than his trade responsibilities. Finance and External at both official and ministerial levels provided a counter-weight in some of these situations. The transfer in the late 1960s of responsibility for administering Canada's quota regime on low-cost imports from Finance to ITC, and the assignment of responsibility for the Textile and Clothing Board to the ITC minister can be explained as much by a desire to let ITC fight out the battles internally as by the department's closeness to the Canadian industry.

Where We Are Now

DRIE is now clearly in the domestic sectoral camp with its priorities focussed on industrial and regional development. It maintains close relations with the private sector through its industry branches in Ottawa and its regional offices but continues to count as one of its priorities improved access to foreign markets for Canadian goods. However, it no longer has the responsibility for finding the internal balance described above and is relatively free of international constraints in pursuing its domestic objectives. This is not to suggest that DRIE has abdicated its interest in international trade matters but, rather, to make the point that it no longer has a strong legislative base or responsibility in the trade field. As the industry sector branches and former DREE officials become fully integrated and domestic-industry oriented, there is a possibility that whatever remains of the international perspective and expertise within DRIE could be lost. In that event, the bias to freer trade will be seriously undermined not only in bureaucratic discussions but also between ministers as a strong DRIE minister centres his attention on domestic rather than international concerns when a conflict between the two is apparent.

The real difficulty for DRIE and External Affairs on trade matters revolves around the question of whether any particular issue is domestic or international, or, perhaps more accurately, where one stops and the other begins. Are border measures to restrict imports of shoes or clothing to protect domestic manufacturers a domestic or

international concern? What about sectoral free trade discussions with the United States, structural adjustment problems involving imports, or financial assistance to domestic industry that might irritate our trading partners and lead to countervailing measures? There is, of course, no demarcation line as trade by definition intimately involves domestic industry in our economic relations with other countries. The government's response to the 1983 report of the Automotive Task Force recommending restrictive content legislation in respect of imported automobiles is a case in point. It was orchestrated by DRIE and that department's minister visited Japan in January 1984 to promote investment in Canada as an alternative to import measures. At the same time the minister for international trade was assigned responsibility for the negotiation of automobile import quotas with the Japanese. Obviously the two cannot be separated in policy terms as one decision affects the other. The Japanese automobile problem is only one of a number of such jurisdictional problems.

The minister of DRIE is also responsible for FIRA which has come under heavy attack from our trading partners in recent years and resulted in a deterioration in our economic relationships with them. A large proportion of Canadian trade consists of intra-firm transfers lending support to the view that trade follows investment, not the flag. Canadian trade and investment are linked at the practical level, even if some seek to separate them conceptually. The relationship between the two is becoming more pronounced as private sector firms continue to internationalize their operations in a global economic environment. The idea of a "Canadian" company or a "Japanese" company is disappearing and countries, especially middle-sized countries like Canada, need to develop new approaches to ensure that we get an appropriate share of the new investment. A test of "significant benefit", which tends to negative findings will not provide the stimulus required. Positive encouragement is needed. Moreover, policy initiatives are unlikely to emanate from an administrative body such as FIRA, whose role does not include policy development. As presently constituted, FIRA is an agent of cabinet. Thus, unless ministers initiate the debate, the whole issue of investment policy usually falls between stools at the bureaucratic level and becomes a focus of

attention only in crisis situations. The difficulties encountered in recent years have been handled on an ad hoc basis with Finance, DRIE, External, the Ministry of State for Economic and Regional Development, the Privy Council Office and FIRA itself engaged in what might be described as a "damage limitation" exercise rather than an assessment of investment policy which is as fundamental as trade to developing a sound economic and industrial policy. The Investment Canada Act, introduced in Parliament in the fall of 1984, should overcome many of these problems.

The relationships between DRIE and External Affairs and Finance are at best confusing. The Textile and Clothing Board, for example, reports to the minister of DRIE but, since it can only recommend border measures to deal with import problems under the Export and Import Permits Act, its recommendations must be referred to the minister for international trade for negotiation and possible action. The minister for international trade is responsible for export promotion but DRIE delivers the PEMD program and it must get the approval from External Affairs for any assistance given under the program in excess of $50,000. Both have cooperated in contacts with the private sector in putting together trade missions but each established separate industry advisory groups, often involving the same individuals from the private sector discussing essentially the same subject matter. DRIE is responsible for the development of domestic industrial adjustment programs while External Affairs encourages discussion of the subject in international institutions in the absence of any clear policy guidelines at home. External Affairs began promoting sectoral free trade discussions with the United States without DRIE and other sectoral departments having done the homework to determine where Canada's comparative advantage lies or whether Canadian industry was interested. The Machinery Equipment Advisory Board makes recommendations for the remission of import duties on machinery not available from Canadian sources but is removed from the main scene of tariff setting in the Department of Finance. The industry sector branches within DRIE normally research an issue with Canadian industry involving duty remission proposals in the context of industry rationalization programs but must turn to Finance for implementation.

Obviously, close cooperation between departments is essential to make these links work but it would be naïve to expect departments to function in complete harmony.

These difficulties are recognized within the bureaucracy and the three departments try to work closely to resolve issues. Within DRIE, the assistant deputy minister (ADM) for policy takes an active role interdepartmentally on trade matters to ensure that the department's views are reflected in trade policy decisions. However, in the DRIE internal structure, this ADM is not responsible for the people who deal directly with Canadian industry nor for establishing their priorities. Thus, when an issue arises in the trade community where inputs from DRIE are needed, the trade ADM must persuade one of his ADM colleagues in charge of a sectoral branch to make resources available for this purpose. This can lead to conflicts in establishing priorities and to questions about which department should take the lead in discussions with Canadian industry and with foreign governments. In a recent case where the initiative with the US was taken by External, a DRIE sectoral branch put out a questionnaire on the subject to Canadian industry without consulting External. Efforts are being made to overcome this kind of problem and to improve working relationships both internally and with other departments. Nonetheless, there could be real problems if DRIE were to take a narrow view of its mandate and subordinate trade to other considerations. It is worth noting that DRIE initiatives within the system normally have been submitted to the cabinet committee on economic and regional development which has sometimes taken a strong domestically biased, short-term view in its decisions.

DRIE is generally charged with responsibility for promoting industrial and regional development and has been allotted funds through the Industrial and Regional Development Program to achieve this objective. This program enables the department to provide financial assistance to private sector firms throughout the country for various activities intended to create jobs, improve competitiveness, etc. While subsidy programs of this kind may be justified in some situations, it is questionable whether they provide a sound basis on which to build a strong industrial structure. As Prime Minister Trudeau noted in a speech in May, 1984, subsidies are in many instances "protectionism in

disguise, preventing change or creating artificial advantage".[3] Yet the primary instrument we have given DRIE to carry out its mandate is a subsidy program. Some of the questionnaires we received from the private sector referred to DRIE as the "hand-out" and "bail-out" department. Others suggested that the subsidy programs were undermining entrepreneurship in the country and creating an environment where no one will do anything until they ascertain levels of available government funding. More important, however, is the question of whether it is reasonable to expect DRIE to develop economic and industrial strategies designed to make our industry internationally competitive when its focus is on subsidizing firms that may never meet the competitiveness test. Perhaps it could carry out its mandate more effectively if it also had control of and responsibility for the other policy instruments that directly affect its activities namely, trade and investment policy, as well as industrial policy. Then the department might be more concerned with promoting framework policies supportive of those industrial developments which will ensure that Canada is able to hold its own against intense international competition, restore a sense of private sector initiative, and secure for Canada a fair share of the world operations of multinational enterprises.

External Affairs, on the other hand, with basically no domestic economic constituency, must find in its trade endeavours a new internal balance between the legitimate concerns of Canadian industry and its broader mandate for maintaining favourable bilateral and multilateral political and economic relations with other countries. Its role is made more difficult in that it must rely heavily on inputs from DRIE and other domestic departments for basic data and information relating to the state of the Canadian economy, areas of comparative advantage, international competitiveness, etc., since it does not have that kind of expertise or analytical capability in house, save for the relatively few officers with industry experience who were transferred as part of the reorganization. This limited capability, however, will likely disappear within a short period of time because of staff rotations and lack of day-to-day contact with domestic industry. While not likely to be a major problem in program-specific trade promotional activities, in the policy

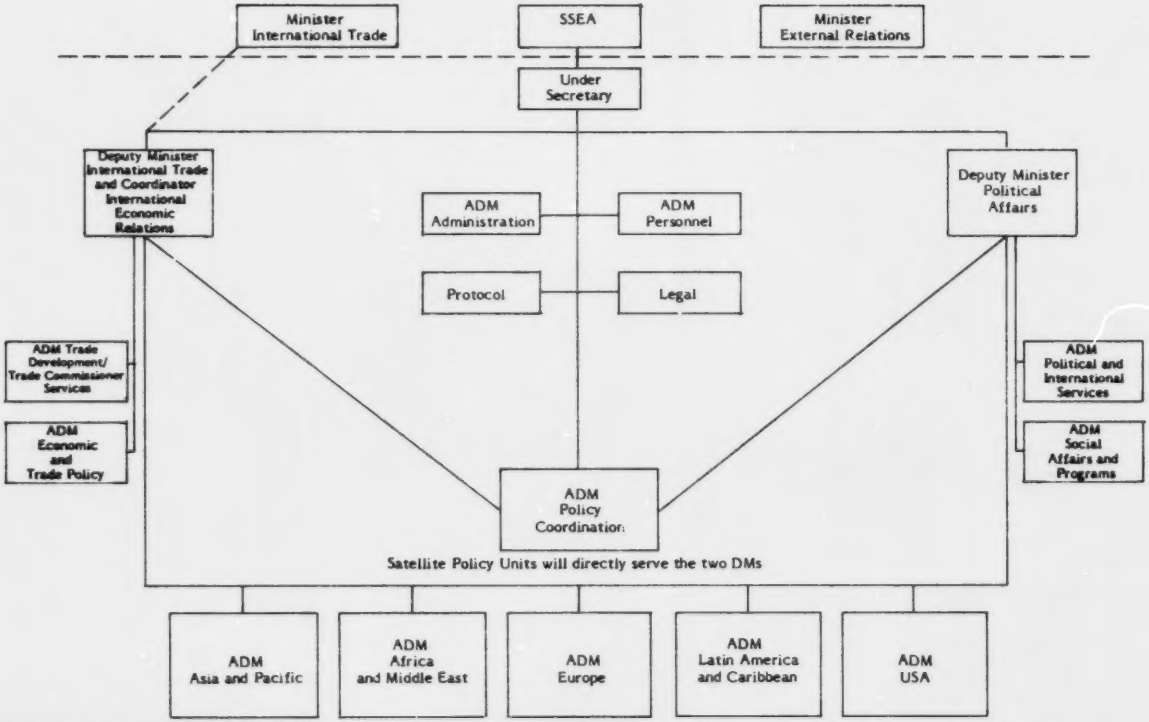
area the potential for conflict is large, both between the two departments and within External itself. A number of observers feel that the trade function in External has now been integrated to such an extent that it is taking over from the primary mandate of the department. In one recent case, Finance officials had to insist that a particular memorandum to cabinet incorporate an assessment of how a proposed restrictive import measure would impact on our relations with the exporting country concerned. This, of course, is the traditional role of External Affairs. The waters are muddied internally as the two sides of the department sort out their respective roles.

In External, after some temporary measures, new structures were finally put in place in the summer and fall of 1983. They involved radical changes to accommodate the trade function and personnel from the old ITC, upgrade the economic and trade focus within the department, and continue the consolidation of Canada's foreign activities which began in 1981 with the move of the immigration branch of Employment and Immigration Canada into External. The reorganization was extensive and required 14 pages of charts to outline the new structures, major personnel moves and inevitable jurisdictional squabbles.

The department has three ministers: the secretary of state for external affairs, the minister for international trade, and a minister for foreign relations. The latter position was not filled by Prime Minister Turner but was by Prime Minister Mulroney. These are supported by the under-secretary, the deputy minister for international trade and coordinator for international economic relations, and the deputy minister for political affairs. As suggested by their titles, the duties of the deputy ministers do not mirror those of the ministers and, at the time of writing, the three deputies continue in place. The under-secretary is the most powerful of the deputies and has overall responsibility for policy and management in the department. Each of the other two deputies has been given exclusive responsibility for certain "functional" branches and for policies and activities in their respective domains that arise in the geographic branches of the department.

Lines of direction and communication are by no means clear as

DEPARTMENT OF EXTERNAL AFFAIRS



will be evident from the accompanying chart. To illustrate, the deputy minister for international trade, with whom we are primarily concerned in this paper, has exclusive responsibility for two branches, namely, the International Trade Development Branch and the Economic and Trade Policy Branch. Both of these are headed by ADMs who share responsibility for the department's economic and market development functions and work in close coordination on policy activities. The five ADMs for the geographical branches (Africa/Middle East, Asia/Pacific, the US, Europe, and Latin America/Caribbean) also report to the deputy minister for interational trade on trade and economic issues in their areas. These five ADMs also have program and reporting responsibilities to the other deputy ministers and are expected to coordinate all of their activities with the functional branches. Further, the deputy minister for international trade in the role of deputy minister of trade reports to the minister for international trade but in the role of coordinator for international economic relations reports to the secretary of state for external affairs.

As might be expected, the scope for jurisdictional battles, duplication of effort, and general confusion in this kind of organization is large, to say nothing of the problems that may be encountered vis-à-vis other departments dealing with the same subjects. Consultation and more consultation has been the order of the day within External. It is not unusual to find that at an interdepartmental meeting on a trade issue, 10 of the 15 or so people in attendance come from External and the discussion is largely between officials of that department. Restrictions on imports of low-cost clothing from Asian countries are a major concern of both the Asia/Pacific Branch and the Economics and Trade Policy Branch. The issue is not simply trade or economics—it affects Canada's broader bilateral and multilateral obligations and relationships which also need to be addressed in taking decisions. The same considerations arise whether the issue is sectoral free trade discussions with the United States, boycotts of Canadian fish products in Europe or the US, or a negative reaction by a foreign government to the disallowance of an investment proposal by FIRA. In other words, the issues cut across divisional lines to the highest levels within External, requiring extensive consultation and numerous meetings at

the official level before an issue can be brought to ministers for solution.

There is little question that the reorganization has successfully focussed the attention of External officials both at home and at our missions abroad on trade and economic activities. This was one of its primary objectives. The geographical branches within the department provide a single point of contact for Canadian officials serving in other countries and they are in a position to bring together all the economic, political, and legal developments within a region to assess Canada's overall relations with a country or group of countries in an area. Organizationally, this is obviously preferable to previous arrangements where the economic and political sides were separated and on many occasions were at loggerheads over specific issues.

One senior official interviewed for this paper commented that in his view trade was always subordinate to industrial development in the old ITC whereas, in External, it is receiving a higher profile and can be integrated with all policy issues affecting our relations with other countries. He cited the border broadcasting case (non-deductibility for income tax purposes of advertising costs incurred by Canadian firms advertising on US border TV stations) which was essentially a cultural/tax issue but also had adverse consequences for Canada's trade relations with the US. In such cases, the official claims that External has a legitimate say in the interdepartmental consideration of the issue whereas the old ITC did not. In this sense, he felt that the melding of trade with foreign affairs was a positive step, at least from a bureaucractic perspective.

The new organization however, appears to run into difficulty at headquarters in terms of reporting relationships. One person characterized it as a situation in which everyone is working for everyone else with no one in command. The trade deputy minister, for example, serves the minister for international trade and must be responsive to his constituency which for the most part is the Canadian business community. Depending on the issue, the other two deputies may identify more closely with a political rather than a trade objective. While both positions are presented internally to the three ministers, the trade minister and his deputy may feel constrained in pursuing a pure

trade option in cabinet committee in the face of strong pressures to do otherwise from within their own department.

One level down, all three deputies are served by the same geographical branches which may provide advice conflicting with that given by the functional branches which report exclusively to the trade deputy. Theoretically, differences should be sorted out at management committee or between ADMs or, if other departments are concerned, at interdepartmental discussions, but this can lead to confrontation pitting one deputy and his officials against another. The problem becomes more acute when, for example, the minister for international trade has strong views on an issue and instructs his deputy minister to pursue a particular course which may run counter to the views held by the other side of the department. In some cases, issues are sorted out on an ad hoc basis reflecting the personalities and experience of the officials concerned rather than the organizational structure. It is known, for example, that the Japanese automobile issue was headed by one functional ADM using the support staff of another functional ADM with relatively little input from the Asia/Pacific geographical branch.

Bringing trade and foreign affairs together has been an interesting experiment in government organization. To some extent it responded to adverse criticisms directed at Canada by our trading partners over certain FIRA practices and the National Energy Program. The deterioration in our economic relationships with other countries resulted in a major effort to turn the situation around by engaging in dialogue with other countries and taking steps to ensure that the international economic implications of all domestic programs were fully considered. There have always been irritants in our trade relations—especially with the United States—and External Affairs has played an active role in sorting these out in much the same way that they participate and help solve the international dimension of issues arising in other areas of activity such as coastal boundaries and defence.

In the reorganization, however, it was decided to move full responsibility for the substance of trade policy to External Affairs rather than have it continue its traditional role. This decision suggests a view that trade policy issues relate more to questions of tactics and

diplomacy than to domestic economic development policy. The net result on the economic side was a separation between the two which theoretically are supposed to be brought together in the coordinating mechanisms at cabinet and deputy minister levels. The difficulty with this approach is that only certain major issues reached these bodies, while many subjects such as preparatory meetings with other countries for trade negotiations and reaction to trade measures taken by other countries are dealt with at the official level. Further, it had become extremely difficult to generate policy discussions under the former cabinet committee structures. As a result, officials were setting up committees at lower levels, for example a trade policy committee, to overcome this difficulty. The more fundamental issue, however, is whether it is possible to develop coherent industrial and economic development proposals for the country when responsibility for the policy instruments is so widely dispersed.

Separating economic development policy and trade policy is only one aspect of the problem. Perhaps more significant is the impact of the integration on the handling of Canada's foreign affairs generally. What relationship does trade have to issues such as acid rain, participation in the Organization of American States, cultural agreements, human rights, testing the cruise missile, or peace initiatives? External Affairs has an extremely broad mandate beyond the trade field and has developed much expertise in these areas. The introduction and pervasiveness of trade within the department has led to confusion within the organization and a lack of direction for its officials. Is it more important for an officer to promote trade or concentrate on pursuing our broader political relations in another country? Further, is trade as an integral part of the department to be given priority over External's normal activities for other government departments?

If responsibility for trade policy had not been transferred to External Affairs, the department would still be required to play an active role in the Ottawa trade community and with other countries on trade issues. However, they would approach the problems from a somewhat different perspective to the extent that their concerns would relate to Canada's broad international interests rather than the specific

concerns of the trade minister and his constituency. More balance in the process might result.

The role of the Department of Finance in trade matters, particularly on import policy, did not change substantively as a result of the 1982 reorganization. On other trade issues such as general policy, market access and exports, Finance officials rely on their minister's general responsibility for managing the economy and the need to keep abreast of emerging international developments to insist on a place at the interdepartmental table. They have done this effectively for many years. Most delegations to bilateral or multilateral meetings include a Finance representative. Other departments have generally welcomed Finance's participation because of the high calibre of individuals fielded and their relative neutrality among vested interests. They usually view an issue in terms of its impact on the Canadian economy generally rather than from the specific concerns of an industry or tactical considerations in striking a deal internationally.

Within the department, the International Branch does not have the same high profile as domestic branches such as taxation or fiscal policy. Trade has been effectively delegated to the ADM of the International Trade and Finance Branch. This has been the case for a number of years as successive deputy ministers busy with other issues have relied on a strong ADM with trade policy experience to carry this side of the house.

Two divisions within the branch, tariffs and international economic relations, both relatively small with fewer than 20 officers each, handle all trade and investment issues. Aside from tariff policy, most of the burden falls to international economic relations which normally spreads itself very thin to keep on top of developments and participate at interdepartmental and international meetings. In many respects, the activities of the division mirror those of External Affairs and DRIE on trade and international economic matters. Thus, it is quite normal for international economic relations to be involved in such diverse subjects as bilateral import restraint negotiations, reacting to recommendations concerning automotive imports, participating in GATT or law of the sea negotiations, or commenting on proposals under consideration by FIRA. It also prepares briefings on trade matters for

the minister for meetings of cabinet committees.

The changes introduced in 1982 in other departments and the growth of central agencies had an indirect effect on Finance's trade role in the interdepartmental community. In many respects, the differences are subjective and attitudinal and relate more to officials in other departments (External, DRIE) consolidating the grasp on their new mandates. Finance can and sometimes does get left out in the early stages of consideration of an issue and, on occasion, is consulted only when a subject is well advanced. In some instances, officials in other departments will have cleared the documents internally at very senior levels, and sometimes with their minister, before Finance officials are given an opportunity to comment. This was less likely to happen before the reorganization because of the wider diffusion of trade responsibilities and the close working relationships that existed at the official level. This exclusion is not widespread at the present time but the potential for it to increase exists both within DRIE and External Affairs. The problem for Finance in these situations is that once a document has been cleared at senior levels it is difficult to send it back for change or redrafting unless a major issue is raised.

This would be a serious difficulty if the individuals representing Finance did not command respect in the trade community. As other departments become more entrenched in their roles, Finance will need to ensure that its early warning system is adequate and that it is in a position to bring something unique to the discussions if its advice is sought. In this connection, a shift in emphasis from dealing with current issues and trade irritants to medium- to long-term studies of the implications for the Canadian economy of trade developments could be a helpful contribution by Finance. On the other hand, one may legitimately ask why Finance should have any substantive role in trade policy issues outside the import policy field. Within the department, officials keep their two ministers fully informed on current international trade matters but few if any of these find their way into the macro-economic and tax deliberations that are the mainstay of the department. Nonetheless, if a trade policy capacity did not exist in Finance, many argue that one would be created if for no other reason than to serve the minister's needs and that, in any event, it is not possible to separate import policy from trade policy generally.

5: THE IMPORT POLICY REGIME

The Players

Import policy has been undergoing major changes for some time quite independent of the 1982 reorganization. The adoption of the Special Import Measures Act (SIMA), proposed acceptance of the Brussels tariff nomenclature, changes to the generalized system of preferences for LDCs, extension of customs jurisdiction to the 200-mile limit, changes in the made/not made in Canada status of tariff items, implementation of the Tokyo Round tariff cuts, and a new system of customs valuation are developments that have taken place since 1979. The Customs Act is being revamped and the establishment of duty free export zones is being encouraged. Certain of these changes such as SIMA and customs valuation result directly from the Tokyo Round of trade negotiations while others, e.g., extension of customs jurisdiction, are responsive to domestic concerns or changed circumstances.

Import policy is an extremely active area involving direct communications with the business community in Canada and abroad and contact with foreign governments. Representations are being received continually for changes in rates of customs duties, amendments to or the establishment of new tariff items, rulings on customs valuation or tariff classification, requests for duty remissions, issuance of import permits or emergency border action against imports.

For many, import policy is simply the customs duty one must pay

when goods are brought into the country from abroad which, in the final analysis is largely true. However, much more is involved. It is an integral part of domestic industrial and economic development policy and one of the primary instruments through which the government achieves trade objectives internationally. Import policy and administrative responsibilities are spread among departments and agencies and, depending on the subject matter, may be approached as strictly legal and factual matters, or require extensive investigation and consultation within the federal government and/or among the federal government, foreign governments, the private sector and provincial governments. Many of the major issues such as quantitative import restrictions are finally decided by cabinet and the process of arriving at that decision can be time consuming.

The main players are essentially the same as those on the trade policy side, with the addition of Revenue Canada. Their functions roughly break down in the following way: Finance is primarily concerned with policy matters relating to anti-dumping and countervailing duties legislation, establishment and amendment of rates of duty in the Customs Tariff or duty remissions under section 17 of the Financial Administration Act, and customs valuation and special protective measures involving emergency surtaxes (safeguards); External Affairs is responsible for the negotiation and administration of quota arrangements or restrictions under the Export and Import Permits Act together with an overall trade and trade relations coordination responsibility; Revenue Canada-Customs and Excise administers the Customs Tariff, the Customs Act, the Anti-dumping Act, the countervailing duties regulations and emergency safeguards measures; and, DRIE administers the machinery and equipment program (duty remission orders in council) and provides advice to other departments concerning the state of Canadian industry, its scope, size, competitiveness, etc., in relation to requests for tariff changes or border measures of protection. Other departments such as Agriculture, Consumer and Corporate Affairs and CIDA are involved when issues of particular interest to them are being considered, as are the Tariff Board, the Anti-dumping Tribunal and the Textile and Clothing Board.

To some extent, the current division of responsibilities on the import side is historical from the days when the Customs Tariff was the main source of government revenue. At that time, it made sense for the Department of Finance to have policy control over the government's primary source of funds and for Revenue Canada to act as the collection agency. Responsibilities under the Anti-dumping Act and the countervailing duty regulations are also split between these two departments primarily because the original legislation relating to these measures was part of the Customs Tariff.

Revenues from the tariff and related customs legislation continue to make an important contribution to total government funds (about $3 billion in 1982); however, the revenue aspect of tariff policy has been more passive than active since the 1950s, having been overtaken in importance by its roles as a protective instrument for Canadian industry and as a bargaining lever in multilateral and bilateral negotiations to obtain improved access for Canadian products in export markets. Even the protective aspect has been steadily declining, although there are still some products subject to relatively high duty rates–textiles, clothing and footwear are examples–as successive trade negotiations in the GATT have significantly lowered levels of duties. When the Tokyo Round cuts are fully implemented the average tariff level on dutiable imports in the Canadian tariff will be 9.2 per cent with about 70 per cent of all imports free of duty. Moreover, countries, including Canada, have been rather imaginative in recent years in resorting to innovative ad hoc measures of a non-tariff nature to deal with domestic protectionist demands. These measures include benchmark prices for steel, limitations on Japanese automobiles, enforcing labelling regulations at the border, as well as the use of domestic subsidy programs and "contingency measures" of protection, i.e., anti-dumping and countervailing duties and safeguard actions. The Customs Tariff, however, is not likely to disappear and will continue for some years as a significant instrument of commercial policy directly affecting private sector activities.

The Roles of Finance and Revenue Canada

Control over the principal import policy levers is the Department of

Finance's strength in the Ottawa trade community. Because the tariff and related legislation are taxing statutes, changes must be approved by Parliament although the legislation does provide, in certain circumstances, for duty reductions by the Governor in Council. The budget each year normally includes a ways-and-means motion proposing a number of amendments to the Customs Tariff reflecting the minister's decisions on representations for change received from various sources since the previous budget. Many requests are rejected because the proposed change is not acceptable to Canadian producers of comparable products, the rate of duty under the tariff item concerned is bound against increase in the GATT, or because it is decided that the item should be used as coinage in negotiations with other countries to obtain better access for Canadian products in their markets.

Within Finance, the minister of state normally handles all parliamentary duties relating to the tariff and other customs legislation and the assistant deputy minister for trade and international finance is the main official concerned. He is supported on tariff and general customs issues by the tariffs division which reviews and analyses all requests received for legislative changes or order in council action to reduce or remit customs duties. Other aspects of import policy such as SIMA are handled by the international economic relations division.

In considering a proposal for a change in a rate of duty in the tariff or a duty remission request, the tariffs division will normally consult with Canadian producers of similar products to determine if the product is available in Canada and, if so, to obtain data relating to production costs, prices, output and availability in the various regions of the country. These data, together with information obtained from the industry sector branches of DRIE, other government departments or industry associations, are assessed by officials in the division in preparing a recommendation for the minister. Finance works closely with both DRIE and Revenue Canada to ensure that any proposed amendments accurately describe the product category and are administratively practical. Much the same process is carried out by the division in respect of Tariff Board reports although, as these are public, the division most often must react to what the Board has proposed or to representations from the private sector either supporting or opposing

the position taken by the Board.

The division's involvement in bilateral and multilateral tariff negotiations is somewhat different, primarily because extensive interdepartmental consultation is required and the balance between what Canada offers to other countries as tariff concessions and what is offered in return must be weighed. Detailed statistical analysis, assessments of Canada's strengths and weaknesses in particular sectors, and intensive consultations with the private sector are usually required. The division played an active role in the development of Canadian negotiating positions in the Tokyo Round of trade negotiations and worked closely with both the negotiating team in Geneva and the special coordinator's office in Ottawa to oversee Canada's participation. It also handles requests for emergency surtax measures and assists in preparing tariff concession or withdrawal proposals for discussions relating to compensation for either Canadian safeguard actions or actions taken by other countries against Canadian exports.

Revenue Canada-Customs and Excise has primary administrative responsibility at Canadian ports of entry for customs legislation and also ensures compliance with a number of other statutes and regulations such as the Food and Drug Act, the Textile Labelling Act, and the Agricultural Products Standards Act. It is a large, widely dispersed department employing slightly over 10,000 people. Uniformity in practice at ports of entry is a major preoccupation and considerable resources are devoted to developing and maintaining adequate systems and procedures to serve the public.

While it has been suggested (Protheroe, 1980) that Revenue's policy role is quite small, in fact its scope for affecting trade and Canada's trade relations with other countries is substantial. The legislation governing Revenue's activities is not as precise as many believe and, indeed, provides considerable latitude for discretion in reaching decisions. Judgments relating to the adequacy of information to support the initiation of investigations, which allowances to permit in the calculation of customs values, or which tariff item applies to what product all directly influence the terms of foreign participation in the Canadian market. Complaints from Canadian industry concerning import competition prompt Revenue Canada investigations that may

lead to the application of higher customs values or a higher rate of duty on an imported product. Decisions by Revenue often result in formal complaints by foreign governments and become irritants in our relations with these countries. This is particularly true when it appears that Revenue is acting without sufficient supporting information. The number of appeals to the Tariff Board on tariff classification and valuation is an indication of the scope for discretionary powers conferred by the legislation.

The provision for price and quantitative undertakings in anti-dumping and countervailing duties cases under SIMA bestows a major new responsibility on the deputy minister and provides a new opening for contact between the department and exporters to Canada and their governments. As the use of contingency measures of protection increases, Revenue Canada will become more heavily involved in the handling of trade-related disputes with other countries because this kind of legislation provides more scope for decision making and judgment.

For the most part, decisions of this nature are handled within the Assessment Programs Branch of Revenue Canada. From January 1, 1969, when the Anti-dumping Act was introduced, to the end of 1983, 212 anti-dumping investigations were formally initiated under the Act. Of that number, 154 cases or 72.6 per cent resulted in preliminary determinations of dumping and references to the Anti-dumping Tribunal. To the end of 1983, the Tribunal made injury findings on all or part of the goods involved in 97 of the cases or approximately 63 per cent of the total referred to them. In other words, the Tribunal found injury in less than half (45.7 per cent) of the cases where investigations were initiated by Revenue Canada, which suggests that the department's preliminary evidence of injury may be somewhat wanting. The department also initiated five investigations into subsidization: two were terminated following the acceptance of price undertakings, two were terminated due to lack of evidence of injury to Canadian producers, and one case was before the Tribunal. (This case was concluded with a finding of injury to Canadian producers on August 7, 1984.)

Throughout its investigations, the Assessment Programs Branch is

in contact not only with the complainant but also with all other Canadian producers of the products, importers, exporters to Canada and in some instances with representatives of the government of the country of export. If the goods are imported from a state-controlled economy or if sufficient information is not available through normal channels to determine values, valuation may be based on data from an exporter in a third country. The process essentially involves a one-way flow of information to Revenue Canada throughout the investigation process, Revenue is subject to pressures and lobbying from interested parties. Over the years, there have been a number of formal diplomatic notes from foreign governments concerning the practices of Revenue Canada particularly regarding the conduct of investigations (some countries will not permit Revenue's investigators direct access to their producers) and the lack of adequate evidence of injury and dumping on which to initiate an investigation.

Finance is in many respects Revenue Canada's guardian in these matters in the sense that Finance sets the policy and Revenue carries it out. Moreover, Finance is always the lead department in representing Canada at GATT anti-dumping or subsidies committee meetings in Geneva and usually leads in any negotiations in these forums or in other tariff-related negotiations. Finance also has, at the time of writing, the lead role in discussions with foreign governments on questions of price undertakings relating to subsidy practices. While External Affairs participates in these discussions and negotiations, its role is essentially that of an observer since it does not have the expertise to participate in a substantive way. Moreover, External and other departments are seldom consulted by Revenue Canada in its decisions although External receives an advance copy of the public notice announcing decisions or investigations. Revenue Canada has assigned customs attachés to our missions in Tokyo, London and Brussels for the purpose of carrying out on-the-spot investigations. They function in a relatively independent manner receiving instructions directly from headquarters in Ottawa. In the day-to-day administration of the legislation, Finance has traditionally taken a hands-off approach and does not attempt to influence Revenue Canada in the administration of the law, a position which may become more difficult to sustain in future as the

determinative aspect of Revenue's work increases.

This raises the question of whether the split in responsibilities between Finance and Revenue Canada on tariff and customs issues continues to be the appropriate division of duties within government. Does it ensure adequate protection for domestic producers where warranted while it enables effective coordination of our commercial and trade policy instruments? It may be that a more cohesive arrangement, particularly with respect to the policy aspects of import issues would better serve Canada's national interest in the more competitive international environment envisaged in the coming years. The relationship between Finance and Revenue Canada is, however, only one of the immediate issues tied to import policy. Safeguard actions against imports that cause or threaten serious injury to Canadian producers of like goods but are not dumped or subsidized also raise concern, as do the relationships between the three independent bodies dealing with imports.

Safeguards

With respect to safeguards, there are two formal mechanisms within the legislative import regime for responding to import situations causing or threatening to cause serious injury to Canadian producers, namely surtaxes under section 8 of the Customs Tariff or quotas under section 5 of the Export and Import Permits Act. These two provisions were amended slightly by SIMA to provide, under certain conditions, for a surtax to remain in place for a period of up to three years (unless earlier revoked by cabinet), and to permit more extensive import surveillance under this Export and Import Permits Act. Monitoring can be carried out under this Act only in clearly defined circumstances, for example, where there is an intergovernmental agreement covering the product in question.

The Export and Import Permits Act, formerly administered by ITC, is now the responsibility of External Affairs. Generally, the Act permits cabinet to impose an import quota on any category of goods based on a finding of serious injury by either the Textile and Clothing Board or the Anti-dumping Tribunal. The import control list covers a variety of agricultural products, textiles, clothing and footwear. There

is also an export control list under the Act which affects sensitive military or security goods. If a product is on either list, an import or export permit is required before goods can cross the border. The surtax legislation, which is the responsibility of the tariffs division within the Department of Finance, permits the Governor in Council to levy a surtax to meet emergency import situations especially where the problems are short term in nature and price related. Measures under either legislative authority must comply with GATT Article XIX, the emergency escape clause provision. Textiles and clothing are in a somewhat different category as actions on these products are governed by the Multifibre Arrangement which permits the negotiation of import levels between consuming countries and low-cost exporters. Emergency safeguard measures may lead to demands for compensation from the exporting country which is free to retaliate if its demands are not met.[4]

Efforts were made during the Tokyo Round of trade negotiations to develop a code of conduct governing the use of safeguard measures by GATT member countries. These were unsuccessful primarily because agreement could not be reached on the question of whether actions had to apply to all countries or could be targeted against specific countries. This item will be high on the agenda during the next GATT negotiations. A bilateral understanding between Canada and the United States was signed early in 1984 covering procedures to follow on safeguard measures between the two countries.

The surtax provision has been used infrequently over the years primarily because Finance is reluctant to use it and treats it as a measure of last resort. While the department receives many representations each year for surtax action, most of these are redirected to Revenue Canada to determine if the problem is dumping or subsidization. Often they are turned back on the basis of a lack of sufficient evidence of serious injury to the industry or a concern that the compensation that would have to be paid to the exporting country would not justify the surtax action. From 1968 to 1982, 26 surtax actions have been taken. Of these, only one applied to a manufactured product other than textiles and clothing, namely bicycles from Taiwan. The remainder covered textile goods prior to the negotiation of

comprehensive quota arrangements and agricultural/horticultural products in response to unexpected bumper crops in the US and Mexico coming to market earlier than Canadian-grown produce. Only one surtax action (yellow onions) was taken in the period 1977-83.

With respect to quotas, again Canada has been reasonably diligent in resisting such measures. Those that have been taken under GATT Article XIX relate almost exclusively to textiles, clothing and footwear. The one exception was the imposition of a global quota on cattle, beef and veal in 1974. The import of other agricultural products such as eggs and poultry is controlled under agricultural stabilization programs. Canada has been required to pay compensation to our trading partners for past clothing and footwear actions and will likely face the same prospect on footwear as that quota has been extended to March, 1986. The comprehensive nature of quotas on textiles and clothing since the mid-1970s has virtually eliminated the need for specific quota actions in this sector under GATT Article XIX. In the face of heavy domestic pressures since 1981, there has been some tightening of the restrictions on clothing imports by rolling back restraint levels, increasing product coverage, and adding new suppliers. The arrangement on Japanese imports of automobiles is "voluntarily" administered by the Japanese and not covered by Canadian legislation.

Of all the import-related legislation, safeguard actions or representation for such actions generate the most debate and grief for both ministers and the bureaucratic trade community. As noted above, most actions have related either to the textiles and clothing or footwear sectors, both of which are highly organized and vocal when it comes to exerting protectionist pressures at the political and bureaucratic levels. They involve firms and employees in industries which have suffered intense competitive pressures from low-cost foreign producers for years. Canada is in much the same position as other industrial countries in respect of the textile and clothing sector and tough negotiations can be expected when the Multifibre Arrangement comes up for renewal in 1986.

Apart from the economics or lack thereof in decision making in safeguard cases, there are a number of points about the process which deserve consideration. Very few surtax or quota actions have been

taken in recent years. Both types of measure are intended to be relatively short-term border actions designed to alleviate a specific emergency injury situation. The considerations do not much differ in a policy sense except that a surtax is usually price related whereas quotas are generally for a longer period and theoretically facilitate structural adjustment at home, a questionable proposition if the clothing and footwear industries are examples.

However, different processes are involved. Quotas under the Export and Import Permits Act require a prior public inquiry into the injurious impact of imports by one of the independent agencies before ministers take a decision. This requirement provides a buffer between ministers and their political constituencies and an opportunity for interested parties to have their case heard publicly based on the facts. On the other hand, it involves two separate decisions: whether to refer the issue to the independent body for study; and, what action to take based on the report of that body. The paperwork, interdepartmental discussion, and infighting, to say nothing of the lobbying by private sector interests or during the public inquiry, is monumental. Ministers and senior officials agonize over these cases weighing the relative merits and consequences of border action, no action or a domestic alternative action.

On the surtax side, the situation is quite different. The analysis, for the most part, is carried out within government departments, mainly Finance. There is little or no public profile and the interdepartmental consultative process is handled expeditiously. Many requests for action are rejected within Finance without being referred to cabinet. If a decision is taken to act, a recommendation to this effect is made by the minister of finance to cabinet. While the department has been known to drag its feet on making a decision if the problem is not clear cut, it moves quickly when it is known that each day is important in protecting the domestic market—such as that for horticultural products—for Canadian producers.

Aside from the question of process, one wonders about the necessity of having three separate bodies with authority to carry out injury inquiries on safeguard cases when there have been so few actions taken or referred for public inquiry. In this connection, it should be

noted that the Anti-dumping Tribunal has dealt mainly with footwear inquiries, the Textile and Clothing Board only with textiles and clothing, while no emergency safeguard cases have been referred to the Tariff Board. This issue will be dealt with in the next chapter.

Another organizational concern relates to the decision to put the Export and Import Permits Act and its administration within the Department of External Affairs. Within External, this work is carried out by the special trade relations bureau which has a large administrative staff handling the issuance of import and export permits (essentially a clerical function), and a relatively small group of officers responsible for the management and negotiation of bilateral restraint arrangements. It is an oddity within External, being the only unit responsible for import legislation and functions largely unrelated to the work of the rest of the department, except for the negotiation mandate. The logic that existed for having it administered in ITC was based on the trade-off between domestic and international interests but is not a factor since the reorganization and the bureau is now more or less an orphan, under attack from all sides and especially from within its own department. As one respondent to our questionaire noted "restraining trade in any way is a difficult negotiation . . . this can be anathema to a department whose raison d'être is to promote good relations". Perhaps it would make more sense for the policy side of the bureau to be housed with those handling other import policy issues and the administrative side housed with Revenue Canada which must, in any event, check on import/export permits when goods cross the border.

6: THE ARM'S-LENGTH IMPORT INSTITUTIONS*

Proposals to amalgamate or rationalize the Tariff Board, the Anti-dumping Tribunal (ADT) and the Textile and Clothing Board (TCB) have been raised more than once. In 1973 it was suggested[5] that the ADT and Tariff Board be amalgamated; in its 1975 report Looking Outward, the Economic Council of Canada recommended "that the Tarriff Board's judicial functions be transferred to a customs court and that the Board be expanded and reconstituted as an independent trade advisory agency incorporating also the present advisory responsibilities of the ADT and TCB and the Machinery and Equipment Advisory Board". In his study of the ADT (1979), Philip Slayton noted that the jurisdictions of the ADT and the Tariff Board are illogical in relation to each other and overlap to some extent. He recommended a number of possible approaches to the problem including the creation of an anti-dumping office which would embrace both the functions of Revenue Canada and the ADT or, alternatively, the reconstitution of the Tribunal as an administrative body to eliminate the excessive legal trappings it has acquired.

* Annex II provides a summary of the functions, activities and organization of the Tariff Board, the Anti-dumping Tribunal and the Textiles and Clothing Board.

The issue was examined at the bureaucratic level several times during the 1970s but no action was taken. One reason was the on-going Tokyo Round of trade negotiations and the expectation that the matter could be dealt with in a comprehensive fashion in the course of implementing the results of that negotiation, including the new code on subsidies and countervailing duties and the revised anti-dumping code. SIMA failed to address the institutional problem although it did include a name change for the ADT, which is now called the Canadian Import Tribunal, and a few housekeeping amendments.

Public discussion of the subject was before the Commons Committee on Import Policy in 1981 when the chairmen of all three bodies testified. The committee also received briefs from some producer organizations, albeit few, indicating support in principle for some degree of rationalization with a view to improving efficiency through a single board and a common staff. Other suggestions included a comment by the Canadian Textile Institute that they "would not wish to see the current arrangments for their sector altered in such a way that the expertise developed by the TCB would be lost," by the Electrical and Electronic Manufacturers Association of Canada that consideration be given to transferring the administration of SIMA from Revenue Canada to an independent or quasi-independent agency, and by Rodney de C. Grey, former assistant deputy minister, Department of Finance, who characterized the current structures as haphazard and wasteful and proposed that the judicial function of the Tariff Board be given to a court of international trade and the other functions of the Tariff Board, ADT and TCB be amalgamated into a single body. Response to the questionnaire for this paper yielded some suggestions supporting amalgamation, but the majority stated a preference for leaving things as they are. A different response might have been received if the question had dealt exclusively with the independent agencies.

The views of the chairmen of the three bodies on institutional change before the Commons committee are interesting. To quote:

Mr. MacDonald—Tarriff Board

> I can say this: If I had been there at the time that the Anti-dumping Tribunal, for example, was created . . . I would, out of long-standing feeling about government organization, have opposed it . . . My own preference . . . would have been to make the Tariff Board whatever you thought it ought to be . . . and not proliferate the number of agencies unless there were very strong compelling arguments for so doing, which I really cannot see . . . But as it stands today, since it has been done and the Anti-dumping Tribunal is working well in its field, we are working well . . . I will not make any comment on the Textile and Clothing Board as being somewhat of an aberration in the structure of things . . . But, at the same time, should it be the wisdom of the government to create [a single body] in the future, it would not trouble me either. I think it would work very well either way.[6]

Mr. Bertrand—Anti-dumping Tribunal

> I think the activity of the Board could be carried out in any way either by an independent board or as part of a more general tribunal . . . We do not have any difficulty with whatever policy choice is made . . . I think certainly there might be some advantages [to a merger], but I think both systems could work. There might be some saving, there might be some simplicity, but this is a matter of policy . . .[7]

Mr. Thur—Textile and Clothing Board

> There is one difference between the three bodies: the Textile and Clothing Board is an advisory board only. We do not decide on anything . . . In my personal opinion, our responsibilities and the types of activities which we must carry out are different from those of the Tariff Board and the ADT . . . If I may answer very directly, I would say that basically it all depends on whether you can identify specific functions . . . If there are specific functions, then the specific functions will require more or less specific bodies whatever administrative form you choose for them. So you may find that there is some advantage in having one big board. It will take about two or three years but you will find it more or less subdivided according to the functions.[8]

The House of Commons committee report (1982) stressed that its study of the agencies had been limited both by mandate and time and concluded that it would be useful to conduct an in-depth study of the relationships among the agencies. In the opinion of the committee, the agencies now function adequately even if there is some overlap in

responsibilities. It also expressed the view that there should be no further growth in the number of agencies that are responsible for only one sector of the economy on the grounds that they take a narrow view of import problems and make it difficult to adopt comprehensive policy.

All three agencies carry out functions which are either prescribed by legislation or are specifically requested by the government of the day. As such, the degree of clout they have within the system is carefully circumscribed and indeed, ultimate decisions on all subjects referred to the agencies rest with the government. The primary area of independence for the agencies is found in their judgments as to whether or not injury exists or is threatened to Canadian industry in any particular situation. However, one cannot dismiss lightly the importance of having a mechanism in place for carrying out public inquiries where opposing views on an issue can be aired.

The chart on the following page is intended to cut through some of the confusion surrounding the activities of the three bodies by categorizing who does what. A number of observations are readily apparent:

- All three bodies can conduct general inquiries at the request of the Governor in Council (cabinet) concerning the import of goods into Canada and their impact on domestic production. While the wording of the different statutes varies slightly, the objective is essentially the same i.e., an economic assessment based on the facts in each case. In all instances, reports from these bodies are advisory and intended to be taken into account by ministers making decisions.
- Only the Tariff Board and the TCB can conduct inquiries at the request of individual ministers. The minister of finance has broad authority for making references to the Tariff Board but, in practice, these have related only to tariffs and customs matters. The minister of DRIE is limited to requesting the TCB to conduct inquiries in the textile and clothing sector. Both bodies make recommendations for action but only in an advisory capacity.
- Only the TCB can carry out an inquiry at the request of industry or on its own initiative.
- Both the Tariff Board and the Anti-dumping Tribunal make decisions which affect the amount of duty or tax payable to the

	(1) Decisions Affecting the levying of duties and taxes	(2) Decisions under (1) subject to appeal to Federal Court on points of law	(3) Decisions on injury to Canadian production **	(4) Conducts injury inquiries at request of specific industry	(5) Conducts inquiries at request of specific minister	(6) Conducts inquiries at request of the Governor in Council	(7) Commences injury inquiries on its own initiative	(8) Provides advice and/or makes recommendations for border measures	(9) Reviews own injury decisions
Tariff Board	YES	YES	YES*	NO	YES	YES	NO	YES	NO***
Anti-dumping Tribunal	YES	YES	YES	NO	NO	YES	NO	NO	YES
Textile and Clothing Board	NO	NO	YES	YES	YES	YES	YES	YES	YES

* The Tariff Board's activity in this area relates only to the general preferential tariff.

** No distinction is made here between material injury (dumping, subsidization) and serious injury (safeguards) because both involve an objective examination on a case-by-case basis of the economic and financial circumstances of an industry and the impact of imports on the industry.

*** We understand that the Tariff Board will be given authority to review its decisions and make recommendations in general preferential tariff cases.

Crown. The former acts on appeals under customs legislation and the latter in deciding injury which, if demonstrated, triggers the levying of anti-dumping duties. This authority has been extended under SIMA to countervailing duty cases. Disputes may be referred to the Federal Court of Appeal on points of law.

- All three bodies have a legislative mandate to decide on the existence of injury from imports in particular situations as opposed to a general reference from cabinet or specific ministers i.e., the Tariff Board in general preferential tariff cases, the ADT in anti-dumping/countervailing cases, and the TCB in respect of its inquiries into the injurious impact of specific categories of textiles or clothing.
- The ADT and TCB have a policy of periodically reviewing their injury findings. This power is to be extended to the Tariff Board in general preferential tariff cases.

It is interesting to consider why there are three independent agencies with separate statutes, budgets, research staffs and offices as well as different procedures and reporting requirements to ministers and Parliament all dealing with closely related issues and drawing on basically comparable economic data. Part of the answer is historical but it also relates to jurisdictional questions and even personalities. Mr. MacDonald, chairman of the Tariff Board implied as much in commenting on the creation of the Anti-dumping Tribunal before the Commons committee:

> At that time the Tariff Board may have been in low esteem because the whole intellectual thrust had been . . . toward a new world trading order. The intellectual energies of all the high flyers were engaged in that . . . Even the words "Tariff Board" were old fashioned and suggested things people were getting away from, protectionism and so on. With new and seemingly more thrustful and dynamic problems in the new international trading regime, it might have seemed desirable to signal something new.[9]

Mr. MacDonald's observation has some validity concerning attitudes prevailing in the late 1960s following the conclusion of the Kennedy Round of trade negotiations and, indeed, the same desire to "signal something new" likely entered into the creation of the TCB as part of the 1970 textile policy. However, more substantive reasons

were put forward for establishing both. In the case of the ADT, Canadian industry was concerned about a movement away from a purely administrative system for determining dumping and the ADT was put in place to provide assurances that the determination of injury would be timely, based on an independent assessment of the facts, and free from other influences such as relations with other countries. This is one of the reasons why the Anti-dumping Act itself was structured so that a positive injury finding, rather than an administrative decision by Revenue Canada, triggers the imposition of the duty.

While limited by law to recommending border measures to deal with an injurious import problem, it was anticipated that a major focus of the TCB would be on structural adjustment within the industry in making such recommendations. In this connection the TCB legislation specifically charges the TCB to take into account "the principle that special measures of protection are not to be implemented for the purpose of encouraging the maintenance of lines of production that have no prospects of becoming competitive with foreign goods in the market in Canada".[10] In the event, the concerns that existed in 1970 appear to have been overtaken by time. The TCB is largely a research organization carrying out tasks that could be performed by the bureaucracy. The ADT, with almost 15 years experience under its belt, has put to rest the original fears of the business community and has demonstrated the merits of an independent assessment of injury in dumping and subsidy cases.

The appeals function of the Tariff Board is distinctive and operates along the lines of the Tax Court of Canada. In this capacity, it is a court of record and justice. Three members must sit, transcripts are maintained, and the fundamental rules of evidence followed. Its job is to see what the law says based on the facts; that is, what Parliament enacted and what the importer is entitled to under the law. The appeals activity requires less funding and manpower than its general inquiry function, even though there is a backlog of work. Suggestions have been made that this activity be hived off to some other body but these were opposed by the Board's chairman before the Commons committee on the grounds that no valid argument has ever been introduced in support of the idea, that it could lead to a highly

structured legal body rather than a court of easy access, and that if the appeal function were not present, the members of the Board would be drastically underemployed. He claimed that it is the appeal work which keeps the individual members challenged and familiar with commercial practice making the Board worth what it is in providing advice to the minister of finance on a trade reference.

The question remains, however, whether three separate bodies are needed to carry out these functions relating to imports. The United States has a much more centralized system. The United States International Trade Commission (USITC) has broad powers to undertake economic inquiries when directed to do so and to make determinations of injury in anti-dumping/countervail cases. In safeguard cases, the USITC makes a determination concerning injury at the request of private petitioners and recommends a remedy. It may inquire into any matter affecting trade in goods or services which is referred to it by the Congress or the president. It may also undertake inquiries on its own initiative. In effect, it combines all the functions of the ADT and Tariff Board except that of hearing appeals (the US Customs Court has this responsibility). Because of its much larger role, the USITC is able to call upon a greater degree of research expertise in the execution of its responsibilities than can our institutions.

The European Communities have no independent institutions comparable to our boards and tribunal or to the USITC. Complaints about import competition and requests for change in the structure of permanent protection are made to the officials of the European Commission. Decisions relating to measures of protection are made by the Commission or council of ministers without public hearings or independent adjudication.

Without wishing to oversimplify things, there are two, and only two, distinct functions conferred by legislation for the three bodies namely, adjudicating appeals from decisions under other acts of Parliament (the Tariff Board) and conducting economic examinations of a domestic industry and its international competitiveness, defined here in its broadest sense to include injury resulting from dumped or subsidized imports (all three bodies). None of the three, including the TCB, has a mandate to recommend or propose industrial assistance and

djustment programs, although it is open to the government to request such recommendations if it wishes. The TCB may evaluate a particular producer's adjustment plan but it is not permitted to suggest amendments to it. Indeed, to a large extent this TCB function was overtaken by the creation of the Canadian Industrial Renewal Board which coordinates and oversees adjustment assistance in the textile, clothing and footwear industries. Officials have suggested that the government has not requested advice on adjustment from the independent bodies because it does not wish to be placed in the position of defending an alternative approach to what might be recommended by one of the agencies. This is particularly true in the case of the TCB which many feel has become a captive of the industry although the most recent footwear reference to the ADT did request recommendations on phasing out quotas in that sector.

It can be argued of course, that injury in dumping or subsidization cases is a different type of injury than that caused in safeguard cases. The former involves "material" injury and the latter "serious" injury; however these terms have never been adequately defined in the GATT and the difference between them is rather obscure. It can also be argued that specialization by the different bodies enables the development of expertise and permits each to pursue functions unique to it. The Tariff Board concentrates primarily on tariff issues, the TCB focuses exclusively on one sector and the ADT on dumping/subsidizations. There may be some merit in these points but the fact remains that the institutions examine essentially the same kinds of information and basic economic data in forming a judgment as to the impact of imports on domestic production whether the case involves dumping, subsidization, safeguards or changes in the level of permanent protection under the Customs Tariff. These inquiries are not legal in the sense of criminal or civil law and there is little justification for surrounding their proceedings with legal formalities involving time and expense for all parties concerned. For a small firm whether it is a Canadian producer or importer, or an exporter to Canada, formal proceedings of this kind can represent a formidable obstacle to doing business.

Overlapping responsibilities and functions among the three bodies

create confusion. Views differ as to what changes, if any, should be made in the current structures. The ADT's procedures are more legalistic than the other two and in Slayton's (1979) view constitute unnecessary trappings for a business-oriented tribunal. A move to a single agency with a larger research staff could reduce the need for adversarial proceedings and diminish this difficulty. As the three chairmen of the institutions observed before the Commons committee, this is a policy issue which can only be addressed by the government. Moreover, it is not simply a question of structures but involves the more fundamental decision concerning additional roles that the agencies could perform to assist government in achieving its trade objectives and whether rationalization or reorganization is called for. Frustration with the present arrangements is reflected in comments to the effect that if you are looking at sick businesses all the time, after a while you don't recognize what is healthy.

An expanded mandate for a larger body might include the right for all industry sectors, and not just textiles and clothing, to petition for a public inquiry similar to the arrangement that the Americans have. In this regard, extending the right of direct access to all Canadian industry for a public inquiry concerning the impact of imports in safeguard cases could go a long way to eliminating the bureaucratic and political debate that now surrounds these issues. Using footwear quotas as an example, it seems obvious that if the industry had known that the present quotas were to expire in November 1984, its members would have petitioned for an inquiry sufficiently early to ensure that decisions could be taken by government prior to the expiry date. This procedure would have eliminated the need for lengthy interdepartmental and cabinet consideration of the question of whether to refer the issue to the ADT for inquiry. The ultimate decision on what action to adopt following a report by the independent body would, of course, still rest with the government in much the same way as cabinet must deal with inquiries carried out by the Canadian Transportation Commission, the Canadian Radio-television and Telecommunications Commission or the National Energy Board. If such a procedure is adopted, it would be essential to ensure that the new body is sufficiently large to meet the demands imposed on it, that it is

objective, and that it takes into account in its deliberations all relevant concerns including consumer interests.

There could also be a larger role for the independent agency to recommend domestic adjustment assistance measures as opposed to border action. Further, there does not appear to be any particular reason why such activities should be limited to import questions. A properly structured body with appropriate research staff could carry out public investigations in respect of other trade-related issues at the request of the government. Indeed, such a body might undertake some of the long-term research on trade matters which is not now being carried out by the bureaucracy and, in the process, generate debate and increased public awareness of the significance of trade to the Canadian economy.

7: PULLING IT ALL TOGETHER

The preceding pages have described the organization and interaction between government departments and agencies on trade matters and have provided an account of influences affecting trade policy and administering trade legislation. There is no one formula for decision making on trade. The approach is essentially pragmatic, based on discrete assessments of Canada's best interests on particular issues but within certain general principles, notably that an open world trading system provides the best environment for Canadians to improve their standard of living but, on occasion, it may be necessary to adopt restrictive import measures to meet short-term domestic concerns, even at some cost to the economy as a whole. Trade policy decisions require conventional wisdom and common sense in real world situations, the results of which may not always correspond to some grand scheme of how things should be.

Conceptually, this strategy poses little difficulty for most Canadians but it is fraught with conflict. The man on the street finds it difficult to understand why he should be out of a job when we are importing steel, clothing, automobiles and other goods which can be produced domestically. The fact that over 25 per cent of Canada's GNP is attributable to exports or that a neighbour's job may depend on them are vague realities. Even more vague is the fact that we need those exports to pay for the goods we must import both for human

consumption and to improve our efficiency and productivity to compete better at home and abroad. The bankrupt firm or unemployed individual wants action to meet specific problems. Pressures for solutions are generally focussed on government at the political level. The policy choice is essentially between border measures and policies aimed at improving Canada's competitiveness and access to world markets, or some combination of the two.

In our system, cabinet is the main decision maker. Major issues in the trade field are no exception. Papers dealing with matters such as the response to the GATT panel's findings on FIRA practices, Canada/US economic relations, adoption of the results of the Tokyo Round of trade negotiations, SIMA, participation in GATT ministerial meetings, extension of the customs jurisdiction to the 200-mile limit, and textile and clothing imports are only a few of the many trade subjects that have been considered by cabinet in recent years. During the Tokyo Round of trade negotiations, a special committee of cabinet, under the chairmanship of the deputy prime minister, was established to oversee Canada's participation. Cabinet is directly involved in the process and sets the general policy which deputy ministers and departments implement. In most cases, however, there is a long delay before a subject is brought to cabinet and many trade matters that have an impact on Canadian business are handled directly by the bureaucracy under delegated authority.

The basic objectives of trade policy are relatively straightforward. Yet, in recent years, we have managed to surround the implementation of that policy with elaborate bureaucratic machinery, confused lines of direction, communication and responsibility, and an inefficient procedural process of questionable merit. External, Finance and DRIE all have major trade interests and the common goal of improving Canada's trading position. This cannot be achieved except through a coordinated approach which supports economic development and improved competitiveness within the country. The division of responsibility among departments makes it extremely difficult to achieve cohesive policy despite efforts to the contrary. When policy does coalesce, it has usually travelled a torturous bureaucratic route and final decisions are often made at the

eleventh hour.

On the import side, Canada's actions are largely covered by legislation with the policy aspects other than on safeguard cases involving import quotas, controlled by Finance. The ongoing activities of Finance (except in trade negotiations) and Revenue Canada receive little play at the interdepartmental policy level unless they give rise to complaints from other countries or require renegotiation of tariff schedules. In either case, the issues are usually technical and legal and it is difficult for officials from other departments to become conversant with the detail although the economics relating to tariff matters are rather basic, i.e., a micro-analysis of the competitiveness of Canadian industry vis-à-vis its counterparts in other countries and a judgment as to the appropriate level of protection needed to compete and remain viable. In negotiations with other countries on tariff and customs matters, Finance consults with External and DRIE to assess the value of what Canada receives relative to what we are offering.

Everything does not run smoothly in the import area. In a recent case involving imports of woollen and worsted fabrics, the industry petitioned the TCB to carry out an inquiry which resulted in the products remaining on the import control list but also resulted in recommendations to the Department of Finance for tariff amendments. Finance, after interdepartmental discussion, referred the matter to the Tariff Board for another public inquiry into tariff aspects of the problem. Thus we have had two public inquiries on a relatively small issue which could probably have been handled more expeditiously by referring the matter to the Tariff Board in the first instance, or more effectively in a single step if only one body existed. Similar difficulties arise in deciding who is responsible for what within the system and getting timely decisions on tariff and customs issues which directly affect Canadian business.

The SIMA legislation illustrates that all is not well on the import policy front. The Act existed in draft for almost five years until finally passed in June of 1984. As noted earlier, the Act implements the GATT codes on anti-dumping and countervailing duties accepted by Canada as part of the Tokyo Round agreements in 1979. Legislation was adopted within months by the United States to ensure that their producers

would benefit from the rights provided for in the codes.

The Canadian implementation effort began in April, 1979, immediately following the conclusion of the Tokyo Round with Finance taking the lead in interdepartmental discussions concerning the kind of legislation required and identification of the major policy issues. This was completed by the fall of 1979 and draft legislation was prepared. The package was submitted to cabinet in the spring of 1980. Cabinet decided to issue a public discussion paper and refer it for study to a special House of Commons committee composed of one member from each of the three political parties. At that time, there was little disagreement between departments on the major proposals put forward in the discussion paper (a basic price system and time limits on investigations were the only major areas of contention). It took two years for the Commons committee to report, endorsing most of the proposals in the discussion paper. During this period, the committee received representations from Canadian industry, held public hearings, visited Brussels and Washington to assess their systems, and prepared its unanimous report. At the same time, officials consulted with our trading partners on various aspects of the proposed legislation as well as with Canadian industry.

Another year and a half passed before Bill C-8 was introduced in the Commons on January 17, 1984. A large part of this delay may be attributed to strong pressures from Canadian heavy electrical equipment manufacturers to ensure that the legislation and its administration would protect against dumping this kind of equipment which is special inasmuch as the goods are generally manufactured to the buyers' specifications, are sold by tender, and require a long lead time to produce. The industry lobbied ministers, MPs, government officials and just about anyone else who would listen. In the event, Bill C-8 gave them what they wanted.

Since the conclusion of the Tokyo Round, most trade experts in Canada and other countries have been warning of the threat of increased use of contingency measures, e.g., anti-dumping and countervailing actions, to provide protection for domestic industry. The number of such actions has been increasing in the United States, our principal market, over the past few years. These have involved a

number of important Canadian exports including lumber, steel, fish and potatoes. In some of these cases, the investigations have been little more than sheer harassment but the consequence for Canadian producers has been high legal costs and countless hours of senior executive time to defend their firms against the allegations. Government officials and ministers have taken a very active role in support of our industry in these cases. SIMA legislation is comparable to corresponding US law and in full compliance with the GATT. Within the bureaucracy, however, SIMA has been regarded as a problem for the Department of Finance, not the trade community, and as a result there was not much momentum behind getting it through Parliament. Indeed, very few people in the trade community have actually read the legislation. To some extent, this reflects certain trade officials' belief that everything that relates to protectionism is bad, even if it merely provides a legislative base to safeguard Canada's rights in accordance with international agreements.

In this connection, it is well to remember that any negotiation involves give and take and that one must have something to offer to get something in return. Regardless of the goodwill that may exist between countries, meaningful negotiations cannot be engaged without a clear sense of direction in domestic policies. Framework policies, supported by legislation where warranted, provide that essential ingredient and are the basis on which new liberalizing efforts can be launched. Canada is now gearing up for the next round of multilateral trade negotiations (MTN) in the GATT, called MTN II, which may address subjects such as trade in services, safeguards, high technology and agricultural trade. Contingency measures of protection will undoubtedly be high on the agenda in these discussions. How will other countries and our domestic industries assess Canada's commitment in negotiations if we do not give priority to implementing the results? Some of the consultation and public inquiry that took place on SIMA was beneficial, but the process took an inordinate amount of time and left Canadian industry in doubt about the rules of the game.

Footwear imports are another case in point. On May 22, 1984, the minister for international trade announced that quotas on footwear, scheduled to expire on November 30, were to be extended for a further

16-month period to March 31, 1986. During this period, the Anti-dumping Tribunal is to conduct a further review (its fourth) of the impact of imports on domestic industry. If it finds that imports continue to pose a threat of injury, the ADT will recommend a plan for their phase-out during an additional three-year period of quotas beyond March 1986. As these quotas were first introduced in 1977, they will have been in place for almost ten years when the current extension expires, with the prospect of continuing for a further three years. Regardless of the economics or politics surrounding this issue, in terms of decision making, one must wonder how and where the process failed. It was known in 1981 that the quotas were to expire in November 1984. If further studies were needed, they surely they could have been undertaken in 1983. It is more important, however, to clarify the rules by which the government expects the domestic industry to operate. It has now been through a long period of uncertainty concerning import quotas, marked by intense lobbying at the official and political level. Short-term quota extensions do little to create confidence in the domestic industry. The mandate of the Canadian Industrial Renewal Board was expanded in 1983 to assist with restructuring this sector and, together with government departments, has a wealth of information on the state of the industry. A longer-term policy might have been put in place without resorting to another inquiry by the Tribunal.

On the export side, other than trade promotion, there are tactical, legal, diplomatic, as well as economic considerations which bridge domestic and international economic policy. Multilateral or bilateral pressures, discussions or negotiations are used in efforts to preserve and improve terms of access for Canadian firms in foreign markets. Making representations to foreign governments in respect of their protectionist legislative or administrative proposals, defending our legal rights in the GATT, and ensuring that other countries comply with theirs, joining an international commodity agreement, promoting cooperation between countries on trade or industrial matters are all trade relations activities that now fall within the mandate of the trade side of External Affairs. Finance and DRIE are involved with External because of the implications for the domestic economy. This is important work which must be carried out both by Ottawa and our

embassies abroad. However, it is not the substance of trade policy anymore than the external relations activities carried out by External for Defence, Fisheries, Environment, Science, Energy or other government departments constitute policy in their respective areas. External Affairs has a legitimate role in representing Canadian interests with other countries in all these activities but that responsibility does not qualify them to be the policy makers in these areas.

Canadian Trade Policy for the 1980s, released in August, 1983 by the minister for international trade, was an attempt to lay out a strategy or framework for trade. Cabinet decided to initiate this work in 1981. In substantive terms, the final document produced little new but for the first time synthesized a large body of trade data, fleshed out the relationships between trade and domestic economic development, and helped focus discussion in Canada on the importance of trade to our economic well-being. It also laid to rest some myths such as the viability of the third option, and stressed the overriding significance of the United States market for Canada.

Work on these papers began at ITC but was transferred to External Affairs in the reorganization. As with SIMA, these papers had to overcome many obstacles before they reached cabinet. Discussions at the official level were lengthy and sometimes acrimonious. The process required extensive consultation between the minister or deputy minister and academics, consultants, provincial governments and the business community, the long road through the cabinet committee process, and endless revisions to the background papers and policy statements before being published.

Was all this necessary? The basic documents and their general thrust were known by July, 1982 when the consultation exercise began. They did not change significantly over the following year. Consultations with the private sector and provincial governments were valuable but these were completed by the fall of 1982. The remaining time was taken up in interdepartmental debate, squabbles, and getting the material through the cabinet committee system. It is interesting to note that Canada played an active role at the GATT ministerial meeting in the fall of 1982 (the deputy prime minister chaired the

meeting) based on cabinet instructions concerning the proposed GATT work program which was endorsed before cabinet considered the documents relating to Canadian Trade Policy for the 1980s.

One of the fallouts from the trade policy review was the initiative to pursue sectoral free trade discussions with the United States. Prior to its public announcement, this subject received little discussion within the interdepartmental community and no economic analysis had been carried out to determine which sectors of Canadian industry would benefit under such a scheme. Since 70 per cent of our exports go to the US market and 75 per cent of that trade takes place between related companies in the two countries, some in-depth analysis would have been useful before this initiative was launched. Instead, the sectoral list was put together on the basis of gut feeling about sectors that might hold their own in competition with the US. Indeed one sector, speciality steel, was added to the list simply because the Americans had taken a safeguard action on these products which, of course, has little or nothing to do with the long term competitiveness of the industry in the two countries or the prospects for rationalization between them. Officials have been scrambling since August 1983 to try to put some flesh on the sectoral proposal which, of necessity, must address not only the trade dimension but also the broader questions of compatability of regulations, taxation, energy, and investment policies in the two countries. None of the three departments has the in-house capacity to carry out longer-term economic analysis in the trade field, and much of the debate that takes place revolves around tactics rather than economics.

The separation of import, export and domestic economic development responsibilities in the Canadian system is the basis for most of the confusion that surrounds trade issues in government. The problem of coordination among departments existed long before the 1982 reorganization. Over the years the three main departments and other sectoral departments have often performed damage limitation exercises without very clear objectives about where they were heading except toward a general lowering of trade barriers. The system worked reasonably well for the most part, while the built-in checks and balances served to safeguard against excesses. However, it did not

result in any dramatic trade initiatives except the auto pact with the US and broke down completely during preparations for the Tokyo Round of trade negotiations when it became clear that someone had to put a package together. Following the MTN, the central point of direction collapsed. It may be that the intention of naming a coordinator for international economic relations in External Affairs as part of the 1982 reorganization, was to establish the kind of arrangement that existed during the MTN on a permanent basis. This has not been achieved at either the bureaucratic or ministerial level.

CONCLUSIONS

Trade policy flows from basic economic development policy. Either it protects domestic producers from foreign competition or gains better access for their products in foreign countries, which means it improves the terms and conditions under which Canadians do business in foreign countries and foreigners do business in Canada. Trade policy represents the interests of, and addresses the Canadian business community in its broadest sense: manufacturers, resource producers, farmers, fishermen, and the services industries, to promote the welfare of all Canadians. Many other considerations must enter into trade policy, including decisions affecting general relationships with our trading partners, but the fundamental objectives do not change. If the key to maintaining and improving our position in an intensely competitive world market is through coordinated decision making, it becomes difficult to justify the current division of responsibilities among Ottawa departments. We must conclude that we have not yet got our system right and that further changes, unwelcome in some quarters, are needed.

It will be recalled that the dual objectives of the 1982 reorganization were to put in place government machinery to maximize the benefits from domestic economic developments and give greater weight to economic factors in the design of foreign policy to better serve Canadian objectives. The orientation of External Affairs has indeed changed since 1982 and officials in Ottawa and at our missions

abroad are very conscious of the trade and economic dimensions of their mandate. Moreover, the trade minister and his officials meet regularly with industry advisory groups, the Export Trade Development Board, and provincial governments. Despite this and the many other efforts by External in pursuit of Canadian trade objectives, there is continuing discontent in both the bureaucracy and the private sector. Canada is the only country that has ever attempted to combine trade and foreign affairs in a single government department. The reorganization was an understandable response to the deterioration of this country's economic relations with other countries that resulted from the National Energy Program and FIRA. However, a country's foreign policy is much larger than its trade or economic interests and, while interwoven in many respects, the complete integration of the two leads to imprecise goals and a loss of direction for officials who must wonder if they should all become economists or concentrate on doing the job they were trained to perform. It should be remembered that the Trade Commissioner Service and the trade promotion function form only one, although an important, aspect of trade. While trade commissioners operate from our missions in foreign countries and work closely with other embassy staff, their clientele is first and foremost the Canadian business community and their focus should not embrace the larger political dimension of our relations with other countries.

One could adjust the present organizational arrangements and suggest some changes in existing procedures within and among departments and agencies. This tinkering with the problem would put us no further ahead in addressing the real issues. The basic objective of another reorganization should be to reduce the present diffusion of trade responsibilities so that a trade minister and his officials would be in a position to develop comprehensive trade policy relating to both goods and services which support domestic, industrial and economic development. Control of and responsibility for policy instruments relating to trade should be situated in one ministry. Such an arrangement should reduce but not eliminate consultation among government departments, bring together all the trade policy expertise within government, eliminate some of the confusion that exists at the present time, and permit a more focussed research effort on trade

matters.

Difficulties within DRIE and between DRIE and other departments on trade issues will not be resolved satisfactorily under the present arrangements. DRIE's current mandate relates to the promotion of the manufacturing, processing and service industries, regional development, tourism, small business and trade and commerce within Canada. It does not have responsibility for other important trade sectors such as agriculture, forestry, fisheries or mineral resources. Nonetheless, DRIE is in a better position to know the strengths and weaknesses of the private sector in Canada than is the Department of External Affairs, whose legislative trade mandate relates almost exclusively to the promotion of exports and trade relations with other countries. Thus one is led to the conclusion that what existed prior to the reorganization was preferable from a trade and domestic industry perspective than what now exists. That same logic, however, leads to the additional conclusion that the former ITC did not possess all the tools it required to develop comprehensive industrial and trade policies. The missing component was import policy.

There are two options which might achieve the objectives noted above. The first would be the creation of a separate trade department much along the lines of the Office of the United States Trade Representative with full responsibility for import and export policy, trade promotion and foreign investment policy. A case might be made for including FIRA in such an organization to the extent that its operations affect Canadian trade and investment relations with other countries; however, this would not be essential if FIRA remained a purely administrative body with policy being developed elsewhere. A trade department would meet the objectives and provide a single window on trade and investment matters in Ottawa for the private sector. It would not eliminate the need for consultation among the various departments and indeed might increase it since other departments would continue to have a major interest in trade issues. There would still be a requirement for close coordination with DRIE, External Affairs and Finance. Its main advantage would be a clearly focussed mandate on all trade issues and, assuming a reasonably strong minister, a more balanced approach in assessing the trade-offs involved

in deciding issues. The obvious disadvantage is that it would still be separated from those departments primarily responsible for developing domestic economic, resource and industrial policy.

The second option would be to return responsibility for trade to DRIE and extend its mandate to cover import policy. While somewhat radical, this is perhaps the most effective way to cut through the bureaucratic maze that exists at the present time, provide the service that is necessary to support the business community and enable the development of coherent policies to maximize economic benefits from domestic programs and investment. DRIE would become a very powerful department, and, with its FIRA responsibilities suitably reoriented to encouraging investment,[11] would be charged with ensuring adequate consideration of the trade-offs and competing priorities between industrial development, trade and investment in the decision-making process. In addition, it would permit full integration of trade activities, regionally and nationally, with other departments (such as Agriculture, Energy, Mines and Resources, Fisheries) in the economic and regional development envelope and ensure that the trade implications of domestic subsidy programs are fully taken into account. This package would permit more cohesive policy development, enable better coordination and policy discussion, and clearly focus responsibility within the system.

Many will argue that putting import policy in the hands of a domestic industry department would be dangerous. There may be some merit to this argument and one would need to guard against an overly protectionist approach developing in DRIE. On the other hand, other ministers and departments would maintain an interest in trade matters and provide a check against tipping the scales in any one direction. More important, however, as the minister's mandate would relate to both industrial development and trade and investment, he and his officials would need to ensure the appropriate balance between domestic and international interests. The Ministry of International Trade and Industry in Japan carries out all of these functions in a rather effective manner. In the United States certain trade activities (anti-dumping/countervail) were transferred from customs to the commerce department and discussions are taking place concerning the possible

transfer of the Office of the United States Trade Representative to that department. In the European Community most of these issues are dealt with by the Commission in Brussels. Can Canada afford to continue in a disorganized fashion?

Some additional comments are relevant to either of these proposals. First, while the new trade responsibility centre would provide direction for the Trade Commissioner Service, it might well remain under the administrative control of External Affairs. Second, because the Customs Tariff and other customs legislation are taxing statutes, some mechanism would be needed to enable the Department of Finance to take account of the financial implications of tariff changes. Third, the trade minister should be assigned responsibility for all independent or semi-independent bodies dealing with trade matters including the import institutions and bodies such as EDC, and CCC. Fourth, consideration should be given to merging the Assessment Programs Branch of Revenue Canada with the trade responsibility centre and transferring the administration, but not the policy, for the Export and Import Permits Act to Revenue Canada.

With respect to the independent import institutions, there can be little doubt that reform is needed. There is no justification for the present arrangements. The bodies should be amalgamated into one as soon as possible. Rather than transferring the Tariff Board appeal function to some other body, incorporation into the new organization would seem to be the best way to help keep the members abreast of commercial developments. Further, it would be important that the new body continue as a court of easy access and that, where possible, the legal trappings surrounding dumping or countervail inquiries be reduced. It is not necessary for the textile and clothing industry to lose any of the services now performed by the TCB. These can be carried out either by the bureaucracy or within the new board. Moreover, the industry may find over time that an upgraded research staff within a single enlarged body may better serve their information needs and that the impartiality of a new board could add credibility to their claims in injury cases and result in quicker action than under the existing regime. The mandate of the new board could be enlarged to permit Canadian industry in all sectors to petition it for public inquiries in cases of

unfair import competition and enable it to carry out trade-related research and public inquiries, either on its own initiative or at the request of the government. It could also make recommendations in an advisory capacity where appropriate.

The incorporation of the Assessment Programs Branch of Revenue Canada into either a trade department or an expanded DRIE is recommended by the increasing need to exercise judgment in carrying out present activities and those under SIMA, most of which are responsive to the concerns of the Canadian business community and are in much the same category as representations received for other actions in the import policy field. It is useful to note that the United States, in launching its countervailing duty investigation against Bombardier's sale of subway cars to New York, cited the example set by Revenue Canada in initiating investigations based on tenders to justify proceeding with their case. Revenue's activities in these areas affect both government-industry as well as government-to-government relations and should be coordinated accordingly. Moreover, moving the branch out of a large administrative department into a policy setting might improve morale and speed up decisons.

Finally, with respect to macro-economic and monetary issues, the sensitive and the fundamental nature of these policies dictate that they be centered in the Department of Finance and the Bank of Canada. External Affairs has and would continue to have a right to be consulted on aspects of policy that affect our relations with other countries. The role of coordinator for international economic relations might legitimately be retained within External Affairs to bring together the international aspects of economic policy, including trade and aid, for major international meetings such as the economic summit, and for coordinating our economic relations with other countries.

ANNEX I: PRIVATE SECTOR COMMENTS IN RESPONSE TO QUESTIONNAIRE

"External Affairs personnel dominate the new organization. ITC people with sound trade backgrounds were passed over."

"Trade issues tend to be industry-specific and the most knowlegeable groups in ITC tended to be the line branches. They in turn had direct and easy access to the area bureaux. They also lent a practical approach to issues which tends to be lacking among those who's sole task is policy creation."

"ITC was doing a reasonably good job. Murphy says if a thing is working leave it alone."

"External Affairs is not business oriented as was ITC."

"For Canada, industrial and regional development is very much related to export development. I think that these two functions need to be very close together both physically and organizationally."

"Industry Trade and Commerce was becoming a very effective department because the trade commissioners and industrial specialist officers worked together as a team on trade and industrial development issues."

"Industry needs strong voice in government that is not circumscribed by trade development considerations."

"I think there should be a distinction between the responsibilities for trade matters and diplomacy. That is, I think External Affairs will have difficulty grasping the mind-set associated with trade."

"We need people who are primarily concerned with Canadian trade interests and not about how to keep their noses clean enough to be

ambassadors. These people are losing touch with Canadian industry and business."

"There is a distinct lack of responsiveness on the part of the bureaucracy at the middle level despite the rhetoric to the contrary at senior management level."

"Generally better performance and more professional advice from the former ITC than at present. Customs & Excise is the weakest and most bureaucratic department."

"Revenue Canada (Customs) is becoming a very difficult group to deal with. They intimidate, are dictatorial and give impression that contacts with the department should be through lawyers."

"Ultimately I believe it would be desirable for those bodies dealing in injurious imports to be merged into one."

"External Affairs personnel have been trained to maintain confidences because of the political sensitivities of the issues they are dealing with. They will have to make a sizeable adjustment to be consultative with industry on issues that affect industry."

"The federal government is a complex bureaucracy made more complex by the reorganization. We believe it should deal with industry on a sectoral basis. The massive decentralization of DRIE militates against this and could contribute to the further fragmentation of industry."

"The combination of DREE and ITC was essentially a good idea but the implementation of the reorganization was a disaster from which the two departments have not yet recovered. My conclusion is: reorganize rarely and if you must, put competent people in charge of the implementation."

"It is our business as a trade association to know where to go for information but we no longer have government personnel who know and relate to our industry. We go to them and educate them all over again. They don't come to us as in the past."

"This is a subject we could write a book about . . . it is perhaps too early to generalize on the results of reorganization. Some of the present difficulties will be resolved whereas some of our worst fears about the consequences may not become apparent for several years yet."

"At times, we have felt the government has not understood the issues that affect us. This is likely caused by jurisdictional limits within departments. Again, who pulls it all together? They should also be more up front with industry."

"The reorganization of functions at External, DRIE causes further confusion as to where one should apply for advice . . . there is a lack of

coordination between the field offices and Ottawa."

"They always seem to be moving or having new telephone systems or numbers put in–very often you are left waiting on the line and nobody comes back."

"Would not like to see our Trade Commissioners become 'diplomats'."

"ITC is more closely involved with manufacturing concerns than External Affairs."

PRIVATE SECTOR RESPONSES TO QUESTIONNAIRE

Question	Responses from Associations (Total 23)			Responses from Firms (Total 53)			Totals		
	Yes (good)	No (bad)	Mixed*	Yes (good)	No (bad)	Mixed*	Yes (good)	No (bad)	Mixed*
1	22	1	-	47	6	-	69	7	-
2	9	14	-	14	33	6	23	47	6
3	13	5	5	31	12	10	44	17	15
4	18	4	1	37	14	2	55	18	3
5 (yes/no)	21	2	-	43	8	2	64	10	2
5 (good/bad)	7	9	7	13	18	22	20	27	29
6	8	9	6	26	18	9	34	27	15
7	10	4	9	25	7	21	35	11	30
8	20	2	1	42	11	-	62	13	1
9 (a)	18	1	4	32	4	17	50	5	21
(b)	13	4	6	24	8	21	37	12	27
(c)	12	6	5	20	14	19	32	20	24
(d)	8	10	5	13	23	17	21	33	22
(e)	11	2	10	23	5	25	34	7	35
(f)	12	6	5	17	15	21	29	21	26
(g)	14	4	5	25	10	18	39	14	23
(h)	6	15	2	8	28	17	14	43	19

* Mixed includes those responses which were undecided, expressed no opinion, simply did not know enough about the organization, or where the respondent felt the question was not applicable to his organization.

ANNEX II: THE INDEPENDENT IMPORT INSTITUTIONS

The Tariff Board

The Tariff Board is the oldest of the import institutions, established by the Tariff Board Act in 1931. It is an advisory body and a quasi-judicial court of appeal reporting to Parliament through the minister of finance. Specifically, the Board is charged with responsibility for (1) economic inquiries into trade and commercial policy issues referred to it either by the minister of finance or the Governor in Council, (2) for the determination of injury to Canadian producers due to imports under the general preferential tariff and (3) for deciding on appeals from administrative decisions made by Revenue Canada-Customs and Excise on tariff classification, customs valuation and the calculation of duties payable on imported goods under customs legislation and the Excise Tax Act and for appeals under the Petroleum Administration Act (what, if any, charge is payable). The Board is a court of record for the purpose of hearing appeals. Its procedures are open and relatively informal and its reports must be published.

The Board consists of a chairman and six members all appointed by the Governor in Council for a term not to exceed 10 years. The main estimates for fiscal year 1983-84 provided for total expenditures of $2.2 million and an authorized employment level of 39 person years of which 60 per cent of the budget and 24 person years are devoted to public inquiries.

The Board is now in the process of carrying out four inquiries on references made to it by the minister of finance dealing with customs valuation, goods made/not made in Canada, "general preferential tariff safeguard petitions", and "customs cooperation council nomenclature". It anticipates receiving some 120 new appeals during the current year for adjudication from rulings made by Revenue Canada and to hear and declare on at least 60 appeal cases. It is attempting to reduce its backlog of cases so that an appellant can be heard within six months of appeal. In the first eight months of 1982, 28 appeals were heard within six months whereas only 11 were heard within that period in 1981/82.

The Board is exclusively responsive and, as such, has little scope for formulating initiatives or controlling the volume of work coming before it. It anticipates an increase in appeals over the next few years due to new federal sales tax legislation, the new Customs Act and SIMA, the adoption of the customs cooperation tariff nomenclature which will involve a complete change in Canada's tariff classification schedule, and safeguard inquiries relating to the general preferential tariff.

In its role as a court of appeal, panels of three members hold public hearings and decide issues. A declaration of the Board is conclusive, subject only to appeal to the Federal Court of Appeal. There are no court costs or charges assessed to the parties appearing. The rules of the Board are informal to keep it a court of easy access. Appeal cases are normally disposed of within a half day or a day. Appeals are usually heard in Ottawa although recently the Board instituted the practice of hearing appeals in western Canada at a fall session and in the Atlantic provinces at a spring session.

The terms of reference for public inquiries by the Board are determined by the minister of finance and set out in a public letter of reference which may also request the Board to report by a certain date. On receipt of the letter, the staff of the Board will compile data and information, (non-confidential information is distributed in background papers to interested parties prior to the public hearing), issue notices of dates for public hearings, carry out independent statistical and economic research, analyse submissions received from interested parties, and prepare questions for examining witnesses at the public

hearings. Public inquiries also involve the preparation of reports which appraise and evaluate all evidence brought before the Board and are provided to all interested parties prior to the final hearing. Hearings of the Board on inquiries are informal to ensure the fullest public participation and openness in presenting viewpoints. The Board makes much of its reputation as a court of easy access. Individuals making oral submissions or presenting briefs do not need to be represented by counsel. All seven members sit on inquiries.

On completion of an inquiry, a report is prepared containing the Board's conclusions and recommendations on rates of duty, the wording of tariff items, and any other matter that had been included in the reference. The report is forwarded to the minister of finance who is required by law to table it within two weeks if Parliament is in session. If Parliament is not in session, the report must be deposited within two weeks of the first day of the next session.

The Anti-dumping Tribunal

The Anti-dumping Tribunal was established by, and derives its authority from, the Anti-dumping Act. The Act came into force on January 1, 1969 and implemented the GATT anti-dumping code. The Act represented a radical departure from previous Canadian practice under which dumping was determined in an essentially administrative manner by Revenue Canada. The new Act left Revenue Canada with responsibility for determining the existence of dumping and for the calculation of the margin of dumping i.e., the difference between the "normal value" and the selling price of imported goods. It also created a new body, the Tribunal, for the purpose of inquiring into whether the dumping causes or threatens to cause "material injury" or retardation to production in Canada. The Act was subsequently amended in 1971 to give the Tribunal authority to inquire into, and report on, requests from the Governor in Council, "on any other matter or thing in relation to the importation of goods into Canada that may cause or threaten injury to the production of goods in Canada" (section 16.1). In 1977, the general procedures followed in anti-dumping cases were extended to cover complaints relating to subsidized imports (countervailing duties) by Order in Council PC 1977-838, March 24, 1977. SIMA will replace

both the Anti-dumping Act and the countervailing duties regulations but maintain the present division of responsibilities between the Tribunal and Revenue Canada.

The Tribunal is a court of record and its proceedings generally resemble those of a court. Anti-dumping cases are normally heard by a panel of three members. Decisions are based entirely on data received either through adversary proceedings or research work carried out by its staff and placed on the public record. Its findings are published. Inquiries on references from the Governor in Council and reviews of past injury findings are carried out under less formal procedures. Its annual reports are tabled in Parliament by the minister of finance.

The Tribunal consists of five members and a secretary, appointed by order in council, as well as a relatively small research and administrative secretariat. The main estimates for fiscal year 1983-84 provide for expenditures of $1.5 million and an authorized employment level of 31 person years, of which twelve are assigned to the research unit. Over the years, the Tribunal has grown from a total person-year compliment of 13 in 1969 to the present 31 with the largest growth occuring in 1974 (from 12-21) and in 1977 (from 20-30). The staff of the Tribunal is technically part of the Department of Finance.

From its inception to the end of 1983, the Tribunal issued 150 findings relating to dumping, carried out four references under section 16.1 of the Act at the request of the Governor in Council (one on imported mushrooms and three on footwear), conducted 46 reviews of previous findings, and provided advice concerning evidence of injury to Revenue Canada on thirteen occasions under section 13 of the Act. In dumping cases, the Tribunal found injury in 97 of the cases examined of which 64 were still in effect on December 31, 1983. While the majority of these have been in place for less than three years, one case on transformers dates from 1970. This case has been reviewed in the interim and resulted in a reaffirmation by the Tribunal of its decision of a likelihood of material injury. The Tribunal normally examines its findings after they have been in place for 3 years to determine whether changed conditions warrant a formal review. Of the 46 reviews carried out by the Tribunal, the injury finding was rescinded in 32 of them. To date, it has been called upon to examine only two cases involving

subsidized imported goods. One resulted in a finding of no injury and the other is currently before the Tribunal.

Normal procedures followed by the Tribunal in anti-dumping cases involve giving public notice of its inquiry to interested parties, publication of the notice in the Canada Gazette, and the issuance of questionnaires to producers, importers, and any other party who may possess information which the Tribunal feels is important. Parties may appear before the Tribunal on their own but most are represented or advised by counsel. A preliminary sitting is usually held five days prior to the public hearing to exchange information, discuss the general procedures to be followed at the hearing, identify issues and advise counsel on matters pertaining to the treatment of confidential information. Counsel, which is not restricted to legal counsel, is given access to confidential information on their undertaking not to disclose it to clients. The same general procedures are followed in a countervailing duties inquiry.

The public hearing on anti-dumping cases usually begins in the seventh week of the 90-day period allowed by the Act for the inquiry. Because of the limited size of its research unit and the lack of specialized staff, e.g., financial analysts, heavy reliance is placed on the adversarial process to obtain and verify information. Evidence advanced during public and in-camera proceedings is subject to cross examination by opposing counsel and to questioning by the panel of members. It is not uncommon for the Tribunal to call witnesses on its own to give evidence. Following the public hearing, the Tribunal issues its findings together with a statement of reasons concerning material injury or retardation. The time taken for a hearing, inclusive of the preliminary sitting, averages four to five days. Duties are imposed by Revenue Canada following an affirmative finding of injury by the Tribunal.

Injury inquiries carried out by the Tribunal are essentially economic in nature involving the examination of a wide variety of factors including employment levels, loss of orders, markets and profits, changed utilization of capacity, price erosion, the volume of imported goods, etc. Factors unrelated to dumping such as product quality, changed consumer tastes, and undumped imports that may also

be affecting domestic production are also examined in assessing the causal relationship between dumping and material injury, a relationship which must be demonstrated to comply with both the Act and the anti-dumping code. The concept of "material injury" is not defined precisely in the GATT agreements or Canadian legislation and, as injury can manifest itself in different ways in different circumstances, the Tribunal must exercise judgment based on the facts in each case. It consistently examines all of the indicators of material injury set out in its rules of procedure. Its injury decisions are subject to review by the Federal Court of Appeal under section 28 of the Federal Court Act on points of law. During 1983, 19 applications involving 13 decisions were made to the Federal Court of which 11 were outstanding at year end. In one of the early cases (Magnasonic, referred to the Court in 1972), the Court's decision clearly established that the Tribunal's inquiries were quasi-judicial and provided guidelines covering its procedures. The Tribunal subsequently issued its own rules of procedure for the conduct of hearings and the handling of evidence.

Inquiries conducted by the Tribunal at the request of the Governor in Council are more administrative in nature since no action necessarily follows from the Tribunal's finding i.e., no duty is imposed. In the last footwear case, however, the Federal Court directed the Tribunal to provide counsel with access to all confidential material with the usual undertaking not to disclose. Six months is usually allowed for the completion of an inquiry and submission of a report although one year has been allowed for the most recent footwear inquiry. Recommendations respecting remedial action have not been requested in earlier footwear inquires nor have they been included in reports.

When the Tribunal is requested to provide advice to Revenue Canada on whether there is evidence of injury due to dumping, prior to the initiation of a formal investigation, it endeavours to do so within 30 days without holding any public hearings on the question. Of the 13 requests received to the end of 1983, the Tribunal confirmed evidence of injury in six cases. The Tribunal's workload in this area will likely increase under SIMA since the right to request the Tribunal's advice on whether evidence of injury exists is being extended to all interested parties. At present, this right is limited to the deputy minister and the

complainant.

The Textile and Clothing Board

The Textile and Clothing Board is an advisory body established in 1971 in conjunction with the Textile Policy of 1970. The TCB can undertake an inquiry into possible injurious import competition of textile and clothing products on its own initiative, at the request of industry, or at the request of either the minister of DRIE or the Governor in Council. The TCB makes findings of injury to Canadian producers and recommends remedies. It reports to the minister of DRIE who, while not required to do so, has made TCB reports public. It is the only industry-specific board of inquiry concerned with imports.

The Act establishing the Board provides for three members appointed by the Governor in Council for seven years. It is required to determine if imported goods "are being imported at such prices, in such quantities and under such conditions as to cause or threaten serious injury to the production in Canada of any textile and clothing goods". Thirty inquiries have been carried out by the Board, most in its early years, and injury was found in 24 of these cases. The TCB issues public notices of its inquiries and has the power of a commissioner appointed under Part I of the Inquiries Act (a power not used to date). It may secure evidence from any interested party and its hearings can be either in public or in camera. It attempts to keep its procedures simple and inexpensive to encourage producers, especially small firms, to present their own cases without legal counsel.

Where an inquiry is initiated at the request of Canadian producers, they are required to file a plan with the TCB describing adjustments they propose to make in their operations, including measures to increase their ability to meet international competition and, if appropriate, the phasing out of lines of production that have no prospect of becoming internationally competitive. In cases either initiated by the Board or initiated at the request of the minister, a producer may but is not obliged to submit such a plan. The Board is required to examine such plans to determine whether their implementation would improve the performance of Canadian producers. It also takes into account any manpower or regional considerations that

may be relevant, the provisions of the GATT, the Multifibre Arrangement or other related international agreements, and the probable effects on consumers.

During the course of an inquiry, if the Board concludes that injury is not being caused or threatened by imports it must terminate the inquiry and make a written report to the minister. If it decides that imports are causing or threatening injury and has made an evaluation of any restructuring/adjustment plans submitted by Canadian producers, it is required to make a written report to the minister setting out the results of the inquiry and recommendations as to whether, in its opinion, special measures of protection should be implemented. It may also make an interim recommendation for the immediate implementation of special measures of protection if, in its view, imports are causing damage to domestic producers "that would be difficult to repair". In such cases, its final report must be submitted within 180 days and must specify the recommended scope and duration of the special measures.

The Board is required to keep under review the effects of any special measures of protection, the progress of adjustment plans by producers, and all other matters relevant to the production of textiles and clothing for the purpose of recommending to the minister modifications or removal of the special measures. However, before recommending any major change the Board must seek the views of any producer that may be significantly affected. Since its inception, the TCB has conducted 28 reviews and found injury in 26 of them. The results of reviews in individual cases used to be published separately but since 1980 they have been incorporated into its annual report.

The activities of the TCB were described by its chairman before the Commons Committee on Import Policy in the following way. In its early years, the Board carried out a large number of inquiries on individual products or very small groups of products made by one firm or by a very limited group of firms. This procedure became totally inadequate in the face of massive imports of clothing in 1976. At that time, the Board carried out an inquiry on almost all clothing categories at the same time which resulted in the interim imposition of a global quota on textile and clothing imports in accordance with Article XIX of

the GATT. The Board's approach has changed since then primarily because there are fewer requests from industry since the adoption of the Multifibre Arrangement and the negotiation of bilateral agreements with supplying countries. It now concentrates on (1) preparation of background material and the identification of possible areas of improvement for renegotiation of the Multifibre Arrangement in 1986, (2) analysis of textile and clothing import data, (3) systematic analysis of data on domestic clothing production and its publication, and (4) maintaining up-to-date information on the nature of the Canadian industry (number of firms, age of equipment, manpower, degree of specialization, etc.). More recently, the Board's activities on specific product inquires have increased and it was or is examining cases dealing with imports of woollen and worsted fabrics, jeans and baler twine. The Board was asked last year by the government to prepare a study on the implications of free trade with the United States in this sector but was not asked for recommendations on the subject.

The main estimates for fiscal year 1983-84 provide for total expenditures by the Board of $1.1 million, an increase of approximately $100,000 from the previous year. It has a total person-year establishment of 17 of which 10 are assigned to research. In appearing before the Commons committee, the chairman of the Board stated, "the director of research is myself and there are about nine other people doing research because that is our basic purpose". The staff of the Board are part of DRIE. Since February 1982, the Board itself has consisted of one full time member i.e., the chairman, and one part-time member. There does not appear to have been any recent movement to fill the current vacancy.

NOTES

1. Press release from the Office of the Prime Minister titled "Reorganization for economic development", made public on January 12, 1982.
2. Statement prepared for Gerald K. Bouey, Governor of the Bank of Canada, who appeared before the Standing Senate Committee on National Finance, December 8, 1982.
3. At the annual convention of the American Newspaper Publishers' Association in Montreal, May 2, 1984.
4. An example is Canada's recent action to uplift duty rates on specialty steel imported from the US following the latter's safeguard measures on those products.
5. By Member of Parliament Marcel Lambert, during consideration of estimates of the Department of Finance for 1973-74.
6. House of Commons, Minutes of Proceedings and Evidence of the Sub-committee on Import Policy, Issue 21, November 5, 1981.
7. House of Commons, Minutes of Proceedings and Evidence of the Sub-committee on Import Policy, Issue 22, November 6, 1981.
8. House of Commons, Minutes of Proceedings and Evidence of the Sub-committee on Import Policy, Issue 20, November 3, 1981.
9. Quoted in House of Commons, Report on the Special Import Measures Act, Ottawa, June 1982.
10. An Act to Establish the Textile and Clothing Board, assented to

May 19, 1971, Ottawa.

11. Investment Canada legislation introduced in the fall of 1984 may achieve this objective.

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